AUG 12 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1968

No. 397

STANDARD CIGAR COMPANY,
a Florida corporation,

Petitioner,

vs.

TABACALERA SEVERIANO JORGE, S. A.,
a Cuban corporation,

and

SEVERIANO JORGE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

WILLIAM A. GILLEN
FOWLER, WHITE, COLLINS,
GILLEN, HUMKEY & TRENAM
First Federal Building
Tampa, Florida 33602
Attorney for Petitioner

FREE PRESS PUB. CO., INC., TAMPA, FLORIDA

SUBJECT INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED FOR REVIEW	2
STATUTES AND RESOLUTIONS INVOLVED	3
STATEMENT OF THE CASE	4
BASIS OF JURISDICTION IN DISTRICT COURT	17
REASONS RELIED ON FOR ALLOWANCE OF WRIT	17
COURT OPINIONS DELIVERED	37
JUDGMENT SOUGHT TO BE REVIEWED	37
CONCLUSION	38

INDEX TO APPENDICES

	Page
FINDINGS OF FACT AND CONCLUSIONS OF LAW	Appendix A 1
OPINION IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT	Appendix B 22
OPINION IN RELATED CASE	Appendix C 42
CUBAN DECREE NO. 1384, of April 9, 1951	Appendix D 44
CUBAN LAW NO. 568, of September 29, 1959	Appendix E 48
CUBAN LAW NO. 647, of November 24, 1959	Appendix F 49
CUBAN LAW NO. 647, of November 24, 1959 (Translation from Spanish)	Appendix G 55
CUBAN LAW NO. 843, of June 30, 1960 (Published July 6, 1960)	Appendix H 61
CUBAN LAW NO. 843, (Translated from Spanish)	Appendix I 64
RESOLUTION NO. 20260, of September 15, 1960	Appendix J 67
HICKENLOOPER AMENDMENT TO THE FOREIGN ASSISTANCE ACT OF 1964, 22 U.S.C., § 2370(e)(2)	Appendix K 72
PROCLAMATION 3447, of February 3, 1967	Appendix L 73
JUDGMENT BELOW IN UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT	Appendix M 75

AUTHORITIES CITED

Cases: Page

Banco Nacional de Cuba v. Sabbatino,
376 U.S. 398 (1964) 5, 8, 26, 30, 31, 36, 37

Boulevard Nat. Bank of Miami v. Air Metals Indus.,
176 So.2d 94 (Fla. 1965) 18

Caldwell v. Armstrong,
342 F.2d 485 (10 Cir. 1965) 21

Chicago R. I. & P. R. Co. v. Sturm,
174 U.S. 710 (1899) 22

Cleveland, etc., R. R. Co. v. Pennsylvania,
15 Wall. 300, 320 (1873) 23

Curry v. McCanless,
307 U.S. 357 (1939) 22, 24

Farmers Loan and Trust Co. v. State of Minnesota,
280 U.S. 204 (1930) 22, 24

F. Palicio y Compania, S.A. v. Brush,
256 F.Supp. 481 (D.C. N.Y. 1966), *aff'd* 375 F.2d 1011 (2 Cir. 1967) *cert. den.*, 389 U.S. 830 (1968) 8, 10, 15, 31, 32, 33, 35, 37

In re Columbia Shoe Co.,
289 F. 465 (2 Cir. 1923) 35

Investment & Securities Co. v. United States
140 F.2d 894 (9 Cir. 1944) 23

Jorge v. Antonio Company,
19 Fla. Supp. 101 (Cir. Ct., Hillsborough County, Fla., 1961) 14, 15

151 So.2d 467 (Dist. Ct. App. Fla. 2d Dist. 1963) 15

Marteney v. United States,
245 F.2d 135 (10 Cir. 1957) 22

Menendez Rodriguez v. Pan-American Life Insurance Co.,
311 F.2d 429 (5 Cir. 1962) 5

340 F.2d 707 (5 Cir. 1965) 6

AUTHORITIES CITED—(Continued)

Cases: Page

Pons v. Republic of Cuba,
294 F.2d 925 (D.C. Cir. 1961), *cert. den.,*
368 U.S. 960 31

Russian Reinsurance Co. v. Stoddard,
240 N.Y. 149, 147 N.E. 703, 707, 709 (1925) 25

Standard Cigar Co. v. Tabacalera Severiano Jorge, S.A.,
376 U.S. 780 (1964) 5

Steingut v. Guaranty Trust Co. of New York,
58 F. Supp. 623 (D.C.N.Y. 1944), *aff'd* 161 F.2d 571 (2 Cir. 1947), *cert. dismissed,* 332 U.S. 753 *cert. den.* 332 U.S. 807 ..... 26, 29, 30

Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,

392 F.2d 706 2

392 F.2d 716 2

311 F.2d 438 (5 Cir. 1962) 5

340 F.2d 708 (5 Cir. 1965) 6

United States v. Belmont,
301 U.S. 324 (1937) 26, 27, 30, 31

United States v. Pink,
315 U.S. 203 (1942) 26, 28, 29, 30

Statutes, etc.:

Cuban Decree No. 1384, of April 9, 1951 ..... 3, 9

Cuban Law No. 13, of December 23, 1948 9

Cuban Law No. 568, of September 29, 1959 3

Cuban Law No. 647, of November 24, 1959 ..... 3, 6, 10

Cuban Law No. 843, of June 30, 1960 ..... 3, 10

Resolution No. 20260, of September 15, 1960 ..... 3, 10, 11

Proclamation No. 3447, 3 C.F.R. 157 ..... 3, 4, 15-16

22 U.S.C., § 2370 (e) (2) 3, 4, 30

28 U.S.C., § 1254 (1) 2

IN THE

Supreme Court of the United States

OCTOBER TERM 1967

NO.

STANDARD CIGAR COMPANY,
a Florida corporation,

Petitioner,

vs.

TABACALERA SEVERIANO JORGE, S. A.,
a Cuban corporation,

and

SEVERIANO JORGE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner, Standard Cigar Company, a corporation organized and existing under the laws of the State of Florida, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, dated and entered March 18, 1968, reversing a final judgment of the United States District Court for the Middle District of Florida, Tampa Division, which had dismissed, be-

cause of the application of the act of state doctrine, the action of the respondents, Tabacalera Severiano Jorge, S.A., a corporation organized and existing under the laws of the Republic of Cuba, and Severiano Jorge.

OPINIONS BELOW

The opinion (Findings of Fact and Conclusions of Law) of the district court (R. 162-189) has not been reported but is printed in App. A, p. 1, *infra*. The opinion of the court of appeals (R. 201-225) is reported in 392 F.2d 706. A copy thereof is printed in App. B, p. 22, *infra*. The opinion of the court of appeals in a related case, *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,* is reported in 392 F.2d 716, and a copy thereof is printed in App. C, p. 42, *infra*.

JURISDICTION

The judgment of the court of appeals sought to be reviewed was dated and entered on March 18, 1968 (R. 227). A timely petition for rehearing (R. 228-241) filed by petitioner was denied by an order dated and entered on May 23, 1968 (R. 243). The jurisdiction of this Court is invoked under 28 U.S.C., § 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err in deciding that the situs of the debt due by the petitioner to Tabacalera was in Florida, the only place the debt could be collected from the petitioner, that the said indebtedness was not property "within Cuba's own territory" which the Cuban Government acquired by virtue of its intervention, seizure and takeover of Tabacalera, and that, therefore, the act of state doctrine is not applicable herein?

2. Did the Court of Appeals err in deciding that the intervention, seizure and takeover of Tabacalera by the Cuban Government and its interventor did not operate to revoke or suspend the power of attorney theretofore given by Tabacalera to Messrs. Jorge and Romano, and that the assignment which Mr. Romano executed in the name of Tabacalera in his capacity as attorney in fact therefor, even though made after the intervention, was a valid assignment which gave Mr. Jorge the right to collect the account from the petitioner?

STATUTES AND RESOLUTIONS INVOLVED

The following Cuban statutes, decrees and resolutions are involved, to-wit: Cuban Decree No. 1384, of April 9, 1951, Cuban Law No. 568, of September 29, 1959, Cuban Law No. 647, of November 24, 1959, Cuban Law No. 843, of June 30, 1960, and Resolution No. 20260, of September 15, 1960.

The pertinent text from Decree No. 1384 is set forth in App. D, p. 44, *infra*. The pertinent text from Cuban Law No. 568 is set forth in App. E, p. 48, *infra*. The pertinent text from Cuban Law No. 647 is set forth in App. F, p. 49, *infra*, and the English translation thereof is set forth in App. G, p. 55, *infra*. The pertinent text from Cuban Law No. 843 is set forth in App. H, p. 61, *infra*, and the English translation thereof is set forth in App. I, p. 64, *infra*. The pertinent text from Resolution No. 20260 is set forth in App. J, p. 67, *infra*.

The following United States statutes and proclamations also are involved, to-wit, Hickenlooper Amendment to the Foreign Assistance Act of 1964, 22 U.S.C., § 2370 (e) (2) and Proclamation No. 3447, of February 3, 1962, 3 C.F.R. 157.

The pertinent part of 22 U.S.C., § 2370 (e) (2) is set forth in App. K, p. 72, *infra*. The pertinent part of Proclamation No. 3447 is set forth in App. L, p. 73, *infra*.

STATEMENT OF THE CASE

On October 26, 1960, the respondent, Tabacalera Severiano Jorge, S.A., a Cuban corporation having its principal place of business in Havana, Cuba (hereinafter called "Tabacalera"), filed its complaint in the district court against the petitioner, Standard Cigar Company, a Florida corporation having its principal place of business in Tampa, Florida, seeking to recover the sum of $100,894.28 for tobacco sold and delivered by the respondent to the petitioner between July 1, 1960 and July 25, 1960 (R. 1-2).

The petitioner moved to dismiss the complaint upon the ground of *forum non conveniens*, or, in the alternative, moved the court to abstain from exercising jurisdiction because the matter was controlled solely by laws, resolutions, proclamations and decrees of the Cuban government and supported its motion by an attached affidavit of Stanford J. Newman, president of the petitioner (R. 3-41). The court heard arguments on the motion, reserved ruling thereon and required the petitioner to file an answer (R. 42).

On April 25, 1961, the petitioner answered, asserting several alternative defenses, including a defense that before the purchase price of the tobacco was payable, the Castro government in Cuba had intervened the entire Cuban tobacco industry, including Tabacalera, had removed the stockholders, directors and officers from control of the corporation, and the interventor appointed by the Cuban government had advised peti-

tioner that no person was authorized to effect collection of the account in the name of Tabacalera in the United States and a request for payment of the same to the interventor was made. The answer charged that the matters involved in the suit were governed by the laws, resolutions, proclamations and decrees of the Cuban government and that any judgment entered herein would not be *res judicata* as to such government, and the court was asked to abstain from exercising jurisdiction. Further, in view of the intervention, it was alleged that Tabacalera was not represented in the action by proper parties and therefore could not maintain the action. Additionally, it was alleged that on or about April 1, 1961, Tabacalera had assigned to Severiano Jorge any right of action which it had against petitioner (R. 42-46).

A final judgment was entered May 22, 1961, dismissing the action on the ground of *forum non conveniens* and alluding to the act of state doctrine (R. 52-54).

On October 17, 1962, the court of appeals reversed the final judgment of the district court, and held that neither of the aforementioned doctrines was applicable. *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,* 311 F.2d 438 (5 Cir. 1962); *Menendez Rodriguez v. Pan-American Life Insurance Co.,* 311 F.2d 429 (5 Cir. 1962).

Petitioner sought a writ of certiorari to review the judgment of the court of appeals, and this Court, in Case No. 846, October Term, 1962, *Standard Cigar Co. v. Tabacalera Severiano Jorge, S.A.,* 376 U.S. 780 (1964), vacated the opinion and judgment of the court of appeals and remanded the case to the court of appeals for further consideration in the light of *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398 (1964).

The court of appeals further considered the matter, and thereafter remanded the case to the district court to afford the parties opportunity to be heard upon de-

velopment of such record as was found necessary by the district court for its determination of the applicability of the act of state doctrine (R. 57-58, 61-62). *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,* 340 F.2d 708 (5 Cir. 1965); *Menendez Rodriguez v. Pan-American Life Insurance Co.,* 340 F.2d 707 (5 Cir. 1965).

In the district court, the final judgment of June 21, 1961, dismissing the cause, without prejudice, was set aside and the parties were given an opportunity to file amended pleadings (R. 65-66).

On November 18, 1965, an amended complaint was filed wherein Tabacalera and the other respondent, Severiano Jorge, both were named as plaintiffs (R. 67-68). The amended complaint alleged, among other things, that Severiano Jorge was the equitable owner of all of the stock of Tabacalera and that since the institution of the suit Tabacalera, on April 1, 1961, had assigned to him all of its interest in the claim sued on. The amended complaint further alleged that Severiano Jorge was at the time of the commencement of the suit a citizen of Cuba and a refugee from the Cuban revolution, and that he had since that time established his residence in Florida and intended to become a United States citizen when he met the residence requirements.

The petitioner answered the amended complaint, asserting five separate defenses (R. 83-86). In its defenses, the petitioner asserted that the contracts for the sale and purchase of the tobacco were made and performed or to be performed in Cuba; that, under the act of state doctrine, the district court should not sit in judgment on the acts of the Cuban government in intervening or nationalizing, in Cuba, Tabacalera, a Cuban

corporation, and taking over its business and assets, including the account receivable involved in the suit; that the stockholders, directors and officers of Tabacalera who were dispossessed and removed from authority and control of the Cuban corporation as a result of the intervention or nationalization and their purported assignee (Jorge) had no right or authority to maintain the action in the name of Tabacalera and to recover the said account receivable; that the transactions and occurrences involved are governed and controlled by the laws, resolutions, decrees and actions of the Cuban Government; that this action should be dismissed under the act of state doctrine or the doctrine of *forum non conveniens,* or both.

Depositions were taken, admissions were made and additional affidavits were filed. The respondents moved for a summary judgment. The petitioner asserted that it was entitled to a summary judgment. The parties entered into a pre-trial stipulation (R. 149). A pre-trial conference was held.

Thereafter, on October 19, 1966, the district court made Findings of Fact and Conclusions of Law and held that the act of state doctrine was applicable and that the petitioner was entitled to a judgment as a matter of law (R. 162-189 and App. A., p. 1, *infra*).

The facts hereinafter set forth are material to the consideration of the questions presented.

Tabacalera, a corporation, was organized in 1954 under the laws of the Republic of Cuba. At all times material herein, its principal place of business was in Havana, Cuba, it was engaged in the business of selling leaf tobacco for use in the manufacture of cigars, and its

stockholders, directors and officers were Cuban citizens and nationals (R. 144; deposition of Severiano Jorge, pp. 3, 4, 22, 26; deposition of Jose Romano, pp. 40-45).

Tabacalera never qualified to do business, or had a place of business, in Florida or elsewhere in the United States.

At all times material herein, Severiano Jorge was a citizen and national of Cuba (R. 67; deposition of Severiano Jorge, pp. 3-5). He was the equitable owner of substantially all of the shares of capital stock of Tabacalera.

On September 24, 1954, Tabacalera executed a general power of attorney in favor of Severiano Jorge and Jose M. Romano, the latter being a Cuban citizen and national, an accountant and a vice-president and the treasurer of Tabacalera (R. 22-34).

The petitioner, Standard Cigar Company, is a Florida corporation with its principal place of business in Tampa, Florida. At all times material herein, the petitioner was and is engaged in the business of manufacturing cigars at its Tampa plant (R. 8).

On January 1, 1959, the revolutionary government of the Republic of Cuba, of which Fidel Castro is the Premier, went into power in Cuba and continuously since then has been in control in Cuba. Since January 7, 1959, such Cuban government has been and is recognized by the United States Government as the sovereign and legal government of the Republic of Cuba (R. 47-48). *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398 (1964); *F. Palicio y Compania, S.A. v. Brush,* 256 F.Supp. 481 (D.C. N.Y. 1966), *aff'd* 375 F.2d 1011 (2 Cir. 1967), *cert. den.,* 389 U.S. 830 (1968).

In July 1960, Tabacalera sold and delivered to petitioner in Havana, Cuba, three separate shipments of leaf tobacco of the aggregate sale and purchase price of $100,894.28 (R. 158). Pursuant to the agreement between the parties, the purchase price of each of the aforementioned shipments was payable by petitioner to Tabacalera in Havana, Cuba.

Also, under Cuban Law No. 13, of December 23, 1948, and Cuban Decree No. 1384, of April 9, 1951, both of which became effective long before the Castro regime, all obligations contracted or payable in Cuba after June 30, 1951, were required to be settled and expressed in Cuban currency. An English translation of Cuban Decree No. 1384 is attached hereto as App. D, *infra*.

Evidence introduced by the petitioner shows that the purchase price for each shipment was due 90 to 120 days after the date of shipment (R. 8-9). Evidence introduced by the respondents shows that the purchase price for each shipment was payable immediately upon the delivery thereof (R. 196).

About August 12, 1960, Mr. Jorge left Cuba never to return there (Deposition of Severiano Jorge, pp. 16-17). About September 1, 1960, Mr. Romano left Cuba, established a residence in Miami and never returned to his country (Deposition of Jose Romano, pp. 3, 26, 27).

Tabacalera continued in business in Cuba under the management of its stockholders, directors and officers until September 15, 1960, when Tabacalera, along with the other corporations, partnerships and firms constituting the Cuban tobacco industry, were intervened and taken over by the Castro government (R. 144, 145).

The intervention and seizure of the Cuban tobacco industry, including Tabacalera, were made pursuant to the authority of Cuban Law No. 647, of November 24, 1959 (App. G, p. 55, *infra*), as amended by Cuban Law No. 843, of June 30, 1960 (App. I, p. 64, *infra*), and Resolution No. 20260, of the Cuban Ministry of Labor, dated September 15, 1960 (R. 15-20, 144-145, App. J, p. 67, *infra*).

Under Cuban Law No. 647, the Cuban government was authorized to appoint an interventor for any corporation, partnership or business intervened. The law vested any such interventor with all the powers required to administer and direct the concern or enterprise intervened, and with all the powers regularly exercised by executives of the intervened party, for whom and in whose place and stead he was substituted. *F. Palicio y Compania, S.A. v. Brush, supra,* 256 F.Supp. at 483, 484 n. 1 and 2, 485 n. 4, D.C.N.Y. 1966, *aff'd* 375 F.2d 1011 (2 Cir. 1967), *cert. den.,* 389 U.S. 830 (1968).

Cuban Law No. 647 also expressly provided that any provisions of the law or regulations contrary thereto were repealed (App. G, p. 60, *infra*).

Resolution No. 20260 appointed Armando Lobato Alvarez the interventor for Tabacalera (R. 15-20). Under Law No. 647 and the resolution, he was vested with complete possession and control of Tabacalera as a business enterprise to the exclusion of the shareholders, directors, officers or other persons who would otherwise manage and conduct the affairs of the corporation. *F. Palicio y Compania, S.A. v. Brush, supra.*

In addition to the broad grant of powers vested in the interventor by Law No. 647, the resolution of intervention specifically bestowed upon the interventor,

among many other powers, the power to represent Tabacalera legally in courts and out of courts and any other facility necessary for the development of its function (R. 20 and App. J, pp. 70-71, *infra.*).

The purpose of the intervention and seizure of the Cuban tobacco industry by the Cuban government, as stated in Resolution No. 20260, was to increase employment, to improve the quality of tobacco products, to guarantee the supply of tobacco to customary markets, to take over businesses which had been abandoned leaving numerous debts and many workers unemployed, and to normalize the situation in the tobacco industry, insuring the stability of workers and their jobs and the production of tobacco and tobacco products in general (R. 15-17, App. J, pp. 67-68, *infra*).

At the time Tabacalera was intervened, Messrs. Jorge and Romano were in Florida (R. 145), and Tabacalera was heavily indebted to growers from whom it previously had purchased leaf tobacco during March, April and May 1960 and to others, including banks, in the aggregate amount of approximately $2,000,000.00 (R. 146).

On September 15, 1960, the interventor actually took over the management and control of Tabacalera including its warehouses, the leaf tobacco in its warehouses, its offices, furniture, equipment, books, records, bank accounts and all other properties and assets (R. 144-148). The interventor ousted those who had been in management and control of the corporation prior to the intervention, and those ousted have never had any further control or management of Tabacalera (R. 145; Deposition of Severiano Jorge, 17-20, 22; Deposition of Jose Romano, pp. 37-40).

For several weeks the interventor continued to do business and to sell and ship leaf tobacco in the name of Tabacalera, but, thereafter, the business was conducted in the name of an agency of the Cuban government (R. 146-148). The brass nameplate bearing the corporation's name was removed from the building it had occupied, and the number "No. 14" was assigned to the building (R. 147). The interventor continued to do business at the premises of Tabacalera, using the books, records, machinery, equipment and other property which had belonged to the corporation (R. 147). The leaf tobacco business, however, was conducted in the name of the Ministry of Exterior Commerce (R. 147-148).

For five or six weeks after the intervention, the interventor continued to do business and to sell and ship leaf tobacco in the name of Tabacalera (R. 146-147). The interventor wrote letters to customers of Tabacalera soliciting new business and directing such customers to pay to the corporation in Havana, Cuba, all sums due for tobacco purchased before the intervention (R. 35, 146).

Mr. Jorge, while in Florida, learned of the intervention during a telephone call to Cuba to Higinio Miguel Caso, the president of Tabacalera, on September 15, 1960, the day of the intervention (R. 197).

On September 16, 1960, the day following the intervention, from Miami, Mr. Jorge wrote to the petitioner on the letterhead of Tabacalera requesting that the balance due for the last several shipments of tobacco be sent to Tabacalera at Miami in his care as agent for it under the power of attorney executed by Tabacalera authorizing him to collect moneys due it (R. 21).

On October 5, 1960, from Havana, the interventor wrote to the petitioner on the letterhead of Tabacalera stating that the Cuban government desired to continue to sell leaf tobacco to the petitioner, forwarding a copy of the petitioner's statement of account with Tabacalera, requesting that the same be settled in due time by remittances directly to the corporation in Havana, *and informing the petitioner that no person or entity whatsoever was authorized to collect the account in Tabacalera's name in the United States (R. 11, 35).*

It was the position of the interventor that the Cuban government was entitled to collect the account of the petitioner and the accounts of other customers of Tabacalera who had purchased tobacco before the intervention (R. 146-147).

On October 8, 1960, from Miami, Mr. Romano wrote to the petitioner, on the letterhead of Tabacalera, sending a statement of the account for the balance due by the petitioner to Tabacalera (R. 11-12, 38-39).

On October 12, 1960, the Miami attorneys who are prosecuting this litigation for the respondents wrote to the petitioner regarding the balance due from the petitioner to Tabacalera, recognizing that the interventor laid claim to the balances due and urging the petitioner not to recognize the claim of the interventor (R. 13, 40-41).

The petitioner did not pay Tabacalera in care of the interventor in Havana or in care of Mr. Jorge in Miami. Thereupon, on October 26, 1960, Mr. Jorge caused this suit to be filed in the name of Tabacalera, as plaintiff (R. 198).

While this suit was pending, on April 1, 1961, Mr. Romano, describing himself as vice president and attorney-in-fact of Tabacalera, executed in the name of Tabacalera a purported assignment to Mr. Jorge, individually, of all of Tabacalera's right, title, interest, claim and demand in and to certain accounts receivable and all sums due thereunder owing by the Antonio Company, a Florida corporation, and Standard Cigar Company, a Florida corporation (R. 49-50; Deposition of Jose Romano, pp. 46-52).

Thereafter, on April 3, 1961, Mr. Jorge caused a suit to be filed in a state court in Florida in the names of Tabacalera Severiano Jorge, S.A., a Cuban corporation, and Severiano Jorge against the Antonio Company, a Florida corporation, Standard Cigar Company, a Florida corporation, and the Republic of Cuba. *Jorge v. Antonio Company,* 19 Fla. Supp. 101 (Cir. Ct., Hillsborough County, Fla., 1961). In that suit the plaintiffs sought a declaratory decree as to the rights and obligations of the parties therein, including the rights of Mr. Jorge as alleged sole stockholder of Tabacalera and assignee of the latter's claims against Antonio Company and Standard Cigar Company.

Shortly after the state court suit was instituted, and on May 21, 1961, the district court dismissed the case at bar on the ground of *forum non conveniens* and alluding to the act of state doctrine (R. 52-54). An appeal ensued. The federal appellate course heretofore taken in this action has been described, *supra.*

While the first appeal in this federal court action was pending, the state court suit was dimissed, on November 28, 1961, upon the ground of *forum non conveniens* and because the actions of the Republic of Cuba in intervening and seizing Tabacalera were not reviewable

by the state court under the act of state doctrine. *Jorge v. Antonio Company, supra.* The plaintiffs in the state court suit appealed, and the state appellate court determined to suspend proceedings in the state court appeal until this action in federal court was tried and determined. *Jorge v. Antonio Company,* 151 So.2d 467 (Dist. Ct. App. Fla., 2d Dist. 1963)

From September 15, 1960, until the present time, the Cuban government, through its interventor or otherwise, has remained continuously in management and control of Tabacalera and its properties and assets. Although "intervention" procedure does not appear to effectuate a formal transfer of title from Tabacalera, its stockholders, directors and officers to the Cuban government, the end result is indistinguishable in practical result from complete confiscation and nationalization. *F. Palicio y Compania, S.A. v. Brush, supra,* 256 F.Supp. at p. 484. Since September 15, 1960, the stockholders, directors and officers of Tabacalera at the time of its intervention have been ousted, without their consent, from all of the properties and excluded from any participation in the business of Tabacalera. Their rights to any receipts and profits have been eliminated. No compensation has been provided to them for their interest as stockholders or otherwise.

The Cuban government has continued in the leaf tobacco business, trading domestically in Cuba and internationally using the properties and facilities which belonged to Tabacalera at the time of the intervention (R. 148). It has collected accounts receivable due for tobacco sold before and after the intervention (R. 146-147; Deposition of Jose Romano, p. 38). Until the United States proclaimed an embargo on trade with Cuba, Proclamation No. 3447, February 3, 1962, 3 C.F.R., 1959-

1963 Compilation, 157, the Cuban government sold and delivered tobacco in Cuba and in the United States to purchasers who used the same in this country (R. 147-148).

The Cuban government, through its interventor or otherwise, did not institute or authorize the institution and maintenance of this action. Likewise, the Cuban government did not assign or authorize the assignment by Tabacalera to Mr. Jorge of the account receivable by Tabacalera from the petitioner. The Cuban government has never ratified, approved or confirmed the institution and maintenance of this action or the assignment of the said account receivable to Mr. Jorge.

After considering the foregoing facts, the district court determined (1) that the act of state doctrine was applicable in this action, (2) that, by virtue of the intervention and takeover of Tabacalera, the Cuban government, by its interventor or otherwise, became vested with the sole right to demand payment of, to collect and to sue to collect the account receivable due by the petitioner to Tabacalera, (3) that those who instituted or caused the institution of this action in the name of Tabacalera had no right or authority to do so, and (4) that the purported assignment of the account receivable in the name of Tabacalera to Severiano Jorge was unauthorized and ineffective (R. 187-189). Accordingly, the district court entered its final judgment dismissing the action (R. 190, App. A, p. 1, *infra*).

The court of appeals reversed the final judgment of the district court, and held (1) that the situs of the debt due by the petitioner to Tabacalera was in Florida, the only place the debt could be collected from the petitioner, that such indebtedness was not "property within Cuba's

own territory" which the Cuban government acquired by virtue of its intervention, seizure and takeover of Tabacalera, and that, therefore, the act of state doctrine is not applicable in this action, and (2) that the intervention, seizure and takeover of Tabacalera by the Cuban government and its interventor did not operate to revoke or suspend the power of attorney theretofore given by Tabacalera to Messrs. Jorge and Romano, and that the assignment which Mr. Romano executed in the name of Tabacalera in his capacity as attorney-in-fact therefor, even though made more than five months after the intervention, was a valid assignment which gave Mr. Jorge the right to collect the account from the petitioner.

BASIS OF JURISDICTION IN DISTRICT COURT

Jurisdiction in the district court was based on diversity of citizenship and the fact that the amount involved exceeds the sum of $10,000.00, exclusive of interest and costs.

The respondents, plaintiffs in the district court, were citizens of the Republic of Cuba, although after the entry of the district court's final judgment on October 19, 1966, Mr. Jorge became a naturalized citizen of the United States on January 27, 1967. The petitioner, defendant in the district court, was and is a citizen of the State of Florida.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

1. That part of the decision of the court of appeals sought to be reviewed which relates to the first question presented for review, concerning the situs of the debt which is the subject of this litigation and the applicability herein of the act of state doctrine, is in conflict with decisions of other courts of appeal on the

same matter and is a decision of a federal question in a way in conflict with applicable decisions of this Court or is a decision of an important question of federal law which has not been, but should be, settled by this Court.

Argument concerning this question will be divided into two parts—first, a discussion of the situs of the account receivable or debt, and, secondly, a consideration of the applicability herein of the act of state doctrine.

A. An account receivable is the right to receive payment of a debt, is a chose in action arising out of contract, and is intangible personal property. *Boulevard Nat. Bank of Miami v. Air Metals Indus.*, 176 So. 2d 94 (Fla. 1965).

The account receivable or debt involved herein arose out of three contracts which were made and performed or to be performed in Cuba. The leaf tobacco which was the subject of the contracts was delivered by Tabacalera to and accepted by the petitioner in Cuba. Pursuant to the agreements of the parties and the applicable Cuban monetary and currency control laws, the sale and purchase price of each of the shipments was to be paid by the petitioner to Tabacalera in Cuba.

Tabacalera was a Cuban corporation having its principal place of business in Cuba and having no place of business in the United States.

Florida and the United States had no contacts with the transactions, unless it be said that it had a contact because one of the contracting parties, the petitioner, was a Florida corporation, having its principal place of business in Tampa, Florida, and was amenable to suit

there. Insofar as the transactions between the petitioner and Tabacalera were concerned, however, nothing occurred or was to occur in the United States.

The foregoing facts were and are undisputed, and it is upon the basis of such facts that the situs of the debt must be determined.

The court of appeals expressly recognized and stated that "resolution of the issue of the situs of the debt determines whether the Act of State Doctrine applies" (App. B, p. 38, *infra*).

The court of appeals then said (App. B, p. 38, *infra*):

> "Therefore we must fashion a rule of federal law to determine whether in dealing with this particular species of intangible property the overriding concern of international relations of the United States and Cuba requires that we give effect to the confiscatory policies of the Cuban government to funds which are fully within the physical control of the American courts, and clearly without the physical control of the courts of the government of Cuba."

The only legal authorities cited by the court of appeals with respect to the situs of intangible personal property are those set forth in the following statement of the court (App. B, pp. 37-38, *infra*):

> "* * * The situs of intangible property is about as intangible a concept as is known to the law. The situs may be in one place for ad valorem tax purposes, *Farmers Loan and Trust Co. v. State of Minnesota*, 280 U.S. 204; it may be in another place for venue purposes, i.e., garnishment, *Chicago R.I. &*

> *P.R. Co. v. Sturm,* 174 U.S 710; it may be in more than one place for tax purposes in certain circumstances, *Curry v. McCanless,* 307 U.S. 357; it may be in still a different place when the need for establishing its true situs is to determine whether an overriding national concern, like the application of the Act of State Doctrine is involved."

In concluding that the situs of the debt was in Florida, the only place the petitioner could be sued, the court of appeals said (App. B, p. 40, *infra*):

> "Here, we do not have a case in which affected third parties are litigating over the accomplished fact of 'takeover' of an asset in Cuba. We are dealing rather with a change in the form of the asset from an account receivable into cash, which can be accomplished only in the courts of the United States. In attempting to fashion a rule fixing the situs of an indebtedness for the very limited purpose of deciding whether it is 'property *within* [Cuba's] *own territory,*' we find no compelling requirement that we accept the fiction that the situs is irrevocably at the domicile of the creditor, a fiction sometimes used for other commercial purposes. For the purpose of our inquiry we find this debt was not property in Cuba."

The court of appeals did not cite a single authority to support its conclusion as to the situs of the debt in question. In fact, the court expressly stated that it "must fashion a rule of federal law to determine" the situs of this particular species of intangible property. In doing so, the court of appeals overlooked or disregarded the conflicting decisions of other courts of appeal and of this Court.

As previously mentioned, accounts receivable or debts are choses in action and are intangible personal property. Thus, decisions of other courts as to the situs

of debts and other choses in action, such as claims under insurance policies and other contracts and for libel, are pertinent.

In *Caldwell v. Armstrong,* 342 F.2d 485 (10 Cir. 1965), the court had under consideration the situs of a matured, single-premium endowment insurance policy upon the life of one Caldwell, whose domicile was in Wyoming, issued by New England Life Insurance Company, which had its office in Massachusetts. Caldwell went into bankruptcy in Wyoming. In the bankruptcy proceeding his former wife sought a lien upon the policy for sums due her pursuant to a decree of divorce previously entered in Wyoming, and the United States sought a lien on the proceeds of the policy because of levies for unpaid federal income taxes due by Caldwell. With respect to the situs of the insurance policy and the right of the divorce court in Wyoming to act with respect thereto, the court said, 342 F.2d, at 489:

> "Because the parties to the divorce were residents of Wyoming, the only problem is whether the power of the court may be exercised in regard to property which is in Massachusetts where the insurer has its office. *The answer is that for purpose of ownership and transfer the situs of personal property is that of the domicile of the owner.* Accordingly, a Wyoming court with its broad statutory powers could order an assignment of the fund, and create a lien in favor of the assignee, to effectuate an award to the divorced wife." (Emphasis supplied)

In the last cited case, the Tenth Circuit decided that for the purpose of determining matters with respect to the *ownership* of or the *transfer* of title to intangible personal property in the form of a matured endowment insurance policy the situs thereof was at the

domicile of the owner (creditor) not at the domicile of the insurer (debtor). That decision is in conflict with the decision sought to be reviewed.

In the case *sub judice,* the court of appeals wholly failed to mention the situs of intangible personal property for the purpose of determining ownership and transfer. The court of appeals referred only to decisions relating to the situs of intangibles for the purpose of taxation of the ownership or transfer thereof, *Farmers Loan and Trust Co. v. State of Minnesota,* 280 U.S. 204 (1930); *Curry v. McCanless,* 307 U.S. 357 (1939), and for venue purposes, i.e., garnishment, *Chicago R.I. & P.R. Co. v. Sturm,* 174 U.S. 710 (1899). None of those cases support the decision of the court of appeals. The two cases relating to taxation of intangibles clearly show that intangibles may be taxed at the domicile of the owner and in one case that they may be taxed elsewhere also. Accordingly, the decision of the court of appeals is in conflict with those cases.

The decision sought to be reviewed also conflicts with the decision in *Marteney v. United States,* 245 F.2d 135 (10 Cir. 1957). In that case, Wayne S. Marteney, who was plaintiff in a libel suit, being indebted to his attorneys on a promissory note, agreed that his attorneys should receive the balance due on the note from Marteney's share of any judgment which might be awarded in the libel action. In discussing the situs of the chose in action, Marteney's claim in the libel suit, the court said, 245 F.2d, at 140:

> " * * * The property involved in this case was personal property. The situs of personal property is generally considered to be that of the domicile of the owner. Grand Prairie State Bank v. United

States, 5 Cir., 206 F.2d 217; Investment & Securities Co. v. United States, 9 Cir., 140 F.2d 894, 11 Am.Jur., Conflict of Laws, § 65 p. 352. * * * "

In *Investment & Securities Co. v. United States,* 140 F.2d 894 (9 Cir. 1944), the court held that the situs of an amount due by the Exchange National Bank of Spokane, Washington, to Judson G. Rosebush, as one of the bank's former shareholders, whose domicile was in Wisconsin, was intangible personal property which had its situs in Wisconsin. This decision of the Ninth Circuit holding that the situs of a debt is at the domicile of the creditor not at the domicile of the debtor is in conflict with the decision sought to be reviewed.

The Fifth Circuit's decision also conflicts with decisions of this Court which determined the situs of debts and other choses in action for tax purposes.

In *Cleveland, etc., R. R. Co. v. Pennsylvania,* 15 Wall. 300, 320 (1873), this Court said:

"Corporations may be taxed, like natural persons, upon their property and business. But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors, is simply to misuse terms. *All the property there can be, in the nature of things, in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicil, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations in numerous adjudications, but no num-*

ber of authorities and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement." (Emphasis supplied)

The foregoing statement was quoted with approval in *Farmers' Loan & Trust Co. v. State of Minnesota,* 280 U.S. 204 (1930), *supra.* In that case, a decedent while domiciled and residing in New York, had owned and kept within that state negotiable bonds and certificates of indebtedness issued by the State of Minnesota and the cities of Minneapolis and St. Paul, none of which had any connection with the business carried on by or for the decedent in Minnesota, and all of which passed under his will, which was probated in New York, where he died. The State of Minnesota attempted to assess an inheritance tax on the transfer of such securities. This Court held that the situs for taxation of the securities was in New York at the domicile of their owner, but not in Minnesota.

In *Curry v. McCanless,* 307 U.S. 357 (1939) *supra,* cited by the court of appeals, the issue was whether the States of Alabama and Tennessee could each impose death taxes upon the transfer of an interest in intangibles held in trust by an Alabama trustee but passing under the will of a beneficiary decedent domiciled in Tennessee. After discussing the principles of taxation applicable to intangibles, this Court held that the intangibles were taxable in both states—in Tennessee the place of domicile of their beneficial owner and the creator of the Alabama trust and in Alabama because the trustee there held the legal title to the securities and limited powers of control thereof. The intangibles had a situs for tax purposes in both states.

The foregoing decisions with respect to the situs of intangibles support the petitioner's contention that their situs was in Cuba at the domicile of Tabacalera. The account receivable belonged to Tabacalera, which confined its activities to the place of its domicile. Tabacalera did not create or use the account receivable in any business in the United States.

Tabacalera was an artificial entity, a creature of Cuban law and the devolution of title to its assets must solely be determined by Cuban law. *Russian Reinsurance Co. v. Stoddard,* 240 N. Y. 149, 147 N.E. 703, 707, 709 (1925).

The mere presence of the debtor, petitioner, in the United States did not and could not make the situs of the debt in Florida, for the purpose of determining the ownership or transfer or amount thereof. Such a conclusion or decision could have far reaching effects upon foreign creditors who had acquired accounts receivable in their countries with respect to transactions there but whose debtors were in the United States.

It, for example, would extend the jurisdiction of our courts beyond their present statutory and constitutional boundaries. The court of appeals said, erroneously petitioner feels, that the *res* was in the United States by virtue of the petitioner (debtor) being here. As between Tabacalera and petitioner that clearly is not correct, because, if it were, the petitioner could institute an action in the United States against Tabacalera asserting that the *res* (debt) is here and challenging the amount of the debt or Tabacalera's ownership thereof. This is impossible under our present system, because there is and would be no way of serving process upon a Cuban corporation having no one in the United States upon whom binding process could be served.

In summary, the decision sought to be reviewed is in conflict with the aforementioned decisions of the Ninth and Tenth Circuits and of this Court with respect to the situs of the debt involved.

B. In its opinion, the court of appeals correctly stated the act of state doctrine as announced in *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398 (1964) but erroneously, petitioner submits, decided that such doctrine is not applicable in this action.

The classic American statement of the act of state doctrine is that every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. *Banco Nacional de Cuba v. Sabbatino, supra.*

As previously mentioned, the court of appeals decided that the intervention, seizure and takeover by the Cuban government of Tabacalera and its assets did not amount to a taking of the account receivable or debt which is the subject of this suit within Cuba's own territory within the language used by this Court in *Sabbatino.*

The decision of the court of appeals is in conflict with the decisions of this court in *United States v. Belmont,* 301 U.S. 324 (1937) and *United States v. Pink,* 315 U.S. 203 (1942) and with the decision of the Second Circuit in *Steingut v. Guaranty Trust Co. of New York,* 58 F.Supp. 623 (D.C.N.Y. 1944), *aff'd* 161 F.2d 571 (2 Cir. 1947), *cert. dismissed,* 332 U.S. 753, *cert. den.* 332 U.S. 807.

In those cases, the court in each instance decided that the seizure or nationalization of Russian corporations by the Soviet government, which foreign government was recognized by the United States, had extraterritorial effect, and would transfer to the Soviet government moneys held by individuals and corporations in the United States and owed to such Russian corporations.

In *United States v. Belmont, supra,* Petrograd Metal Works had deposited money with August Belmont, a private banker doing business in New York City. In 1918, the Soviet government dissolved, terminated and liquidated the corporation (together with other Russian corporations) and nationalized and appropriated all of its properties and assets of every kind and wherever situated, including the deposit account with August Belmont. As a result, the deposit became the property of the Soviet government and so remained until November 16, 1933, at which time the Soviet government released and assigned to the United States government all amounts due the Soviet government from American nationals, including the deposit account of the Russian corporation with August Belmont. The recognition of the Soviet government by the United States government was coincident with the aforementioned assignment and release.

The executors of August Belmont failed and refused to pay the amount of the deposit account upon demand duly made by the United States, and the latter instituted suit against the executors to recover the amount of the deposit account. A motion to dismiss the complaint for failure to state facts sufficient to constitute a cause of action was sustained by the district court, and its judgment was affirmed by the circuit court of appeals. The

circuit court of appeals took the view that the situs of the bank deposit was within the State of New York; that in no sense could it be regarded as an intangible property right within Soviet territory; and that the nationalization decree, if enforced, would put into effect an act of confiscation which would be contrary to the public policy of the State of New York.

This Court, applying the act of state doctrine to the facts which existed in that case, said, at 301 U.S. 332:

> "* * * *What another country has done in the way of taking over property of its nationals, and especially of its corporations, is not a matter for judicial consideration here. Such nationals must look to their own government for any redress to which they may be entitled.* So far as the record shows, only the rights of the Russian corporation have been affected by what has been done; and it will be time enough to consider the rights of our nationals when, if ever, by proper judicial proceeding, it shall be made to appear that they are so affected as to entitle them to judicial relief. *The substantive right to the moneys, as now disclosed, became vested in the Soviet government as the successor to the corporation;* and this right that government has passed to the United States. It does not appear that respondents have any interest in the matter beyond that of a custodian. Thus far no question under the Fifth Amendment is involved.
>
> "It results that the complaint states a cause of action and that the judgment of the court below to the contrary is erroneous. * * *" (Emphasis supplied)

In *United States v. Pink, supra,* there was a controversy over assets in the hands of the Superintendent of Insurance of the State of New York, of the New York branch of the First Russian Insurance Company, a Russian corporation which had been nationalized by the

Soviet government, and which assets were assigned in 1933 by the Soviet government to the United States government. The United States sued to recover such assets. Among the issues involved in that litigation were whether claims of foreign creditors of the Russian insurer were superior to the assignment *and whether any surplus remaining after the payment of foreign creditors should be paid to a quorum of the board of directors of the Russian insurer.* In the *Pink* case, this Court said at 315 U.S. 234:

> "We hold that the right to the funds or property in question became vested in the Soviet Government as the successor to the First Russian Insurance Co.; that this right has passed to the United States under the Litvinov Assignment; and that the United States is entitled to the property as against the corporation and the foreign creditors."

The case of *Steingut v. Guaranty Trust Co. of New York, supra,* involved the effect of certain decrees of the Soviet government which nationalized all existing Russian private joint stock banks and banking houses and expropriated their assets. One of the banks, Russo-Asiatic Bank, had a credit balance with the Guaranty Trust Company, in New York. The Soviet government, upon its recognition by the United States government, assigned to the latter the credit balance of the Russian bank. Upon the authority of the *Belmont* and *Pink* cases, the district court held that, under the nationalization decrees, the Soviet government succeeded to the rights of the Russian bank; that the nationalization decrees had extraterritorial effect upon the deposit account in the New York bank; and that the United States acquired the deposit account by virtue of an assignment from the Soviet government. The decision was affirmed by the circuit court of appeals and all petitions for certiorari arising out of the litigation were dismissed or denied.

The *Belmont, Pink* and *Steingut* cases are much stronger decisions than necessary to show the applicability of the act of state doctrine in the case at bar. There the bank deposits, credit balances and similar assets were in the hands of American nationals in the United States. The transactions had occurred in the United States. The relationship of debtor and creditor existed between the Russian corporations and the American nationals. The debts were created and were payable in the United States in the currency of our country. The nationalization of the Russian corporations and the appropriation of their assets took place in Russia. Even under those facts, this Court held that what the Soviet government had done in the way of taking over property of its nationals, *and especially of its corporations,* was not a matter for judicial consideration in the United States, and that the Russian nationals must look to their own government for any redress to which they may be entitled.

In the case at bar, the debt due a Cuban corporation by a Florida corporation was created and was payable in Cuba. The Cuban government, in Cuba, seized and intervened the Cuban corporation, and took over the management and control of the corporation and its assets, including the debt here involved. The Cuban interventor demanded of the petitioner that the debt be paid to the Cuban corporation in Cuba, and informed the petitioner that no one was authorized to collect the debt in the United States.

After the *Sabbatino* decision, the United States enacted the Hickenlooper Amendment to the Foreign Assistance Act of 1964, which, as amended, 22 U.S.C., § 2370 (e) (2), modified the effect of *Sabbatino* in certain respects, but not in any respect which would be controlling

of this action. The Hickenlooper Amendment expressly provides that it does not apply to acts of a foreign government which are not contrary to international law. No question of international law is involved in this litigation because the acts of a state directed against its own nationals, here Tabacalera and Mr. Jorge, do not give rise to questions of international law. *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 433 n. 37; *F. Palicio y Compania, S.A. v. Brush,* 256 F.Supp. 481 (D.C.N.Y. 1966), *aff'd,* 375 F.2d 1011 (2 Cir. 1967), *cert den.,* 389 U.S. 830 (1968); *United States v. Belmont, supra; Pons v. Republic of Cuba,* 294 F.2d 925 (D.C. Cir. 1961), *cert. den.,* 368 U.S. 960.

F. Palicio y Compania, S.A. v. Brush, supra, involved three Cuban corporations, a Cuban partnership and a Cuban limited partnership, all a part of the Cuban tobacco industry, and all of which were intervened and taken over by the Cuban government at the same time and under the same intervention laws and the same intervention resolution as Tabacalera. In discussing the application of the act of state doctrine to the interventions there under consideration, the district court said, 256 F.Supp, at 486:

> "It is plain that the decrees of intervention or nationalization involved in this case are prototypes of acts of state to which the act of state doctrine applies. See Restatement (Second), Foreign Relations Law of the United States, § 41, Comment d (1965). * * *"

From the foregoing, it is clear that the intervention, seizure and takeover of Tabacalera and its assets, including the account receivable involved herein, was an act of state on the part of the Cuban government, upon which the courts of this country should not sit in judgment.

2. That part of the decision of the court of appeals sought to be reviewed which relates to the second question presented for review, concerning the effect of the intervention, seizure and takeover of Tabacalera upon the power of attorney held by Messrs. Jorge and Romano and the validity of the assignment which Mr. Jorge executed in the name of Tabacalera in his capacity as attorney-in-fact therefor, is in conflict with a decision of another court of appeals on the same matter and is a decision of a federal question in a way in conflict with an applicable decision of this court.

The petitioner asserts that the decision of the court of appeals conflicts with the decision of the Second Circuit in *F. Palicio y Compania, S.A. v. Brush,* 375 F.2d 1011 (2 Cir. 1967) *cert. den.,* 389 U.S. 830 (1968), *affirming* per curiam 256 F.Supp. 481 (S.D. N.Y. 1966), with respect to the effect of the intervention of Tabacalera by the Cuban government and with respect to the powers and authority of the interventor.

Brush, supra, involved the intervention of three Cuban corporations, a Cuban partnership and a Cuban limited partnership, by the Cuban government pursuant to the same intervention laws and resolution as was and is applicable to the intervention of Tabacalera.

The facts in each case are substantially the same insofar as they clearly establish that on September 15, 1960, the date of the intervention, the Castro government and its interventor took possession of the businesses and assets in Cuba of each of the entities and ousted the owners and those who had managed and controlled the enterprises on their behalf. The interventors assumed possession and control and actually operated the businesses thereafter on behalf of the government.

The former owners have been ousted without their consent from all the properties and excluded from any participation in the businesses. Their rights to any receipts and profits have been eliminated and no compensation has been provided.

In *Brush, supra,* the district court said, 256 F.Supp., at 483-484:

> "On September 15, 1960, however, the Castro government of Cuba, acting under Cuban law, took possession of the businesses and assets in Cuba of each of the entities and ousted the owners and those who had managed and controlled the enterprises on their behalf. The Cuban government designated so-called "interventors" for each of the entities, who assumed possession and control and actually operated the businesses thereafter on behalf of the government. Under 'intervention' procedure the interventor is vested with complete possession and control of a business enterprise to the exclusion of the officers, directors, shareholders, partners or other persons who would otherwise manage and conduct it. Though intervention does not appear to effectuate a formal transfer of title from the former owners and managers to the governmental authorities, the end result is indistinguishable in practical effect from complete confiscation — for almost six years the former owners have been ousted without their consent from all the properties and excluded from any participation in the businesses. Their rights to any receipts and profits have been eliminated. No compensation has been provided.
>
> "The intervention of four of the entities has remained in effect from September 15, 1960 until the present. The fifth entity—Cifuentes—was nationalized on June 29, 1961 by resolution of the Cuban Central Planning Board."

The Fifth Circuit said that the act of the Cuban government amounted only to "intervention for the period of one year" (App. B, p. 34, *infra*). In footnote 3 of its opinion, the court said that the record is void of any proof of what actually was the status of affairs, although it may feel fairly certain that the Cuban government has not affirmatively relinquished whatever rights it had to supplant the original directors and stockholders of Tabacalera. The Fifth Circuit said that there was in effect a limited temporary receivership (App. B, p. 37, *infra*).

The last mentioned portions of the decision of the Fifth Circuit are in direct conflict with that portion of the decision of the Second Circuit which said that "Though intervention does not appear to effectuate a formal transfer of title from the former owners and managers to the government authorities, the end result is indistinguishable in practical effect from complete confiscation * * * "

The Fifth Circuit held that the power of attorney given by Tabacalera to Messrs. Jorge and Romano could be revoked only by the execution of a similar document filed in the same registry in which the power of attorney had been filed; that the Cuban government did not give its interventor power to revoke outstanding powers of attorney and that the interventor did not attempt to do so; that the Cuban government and the interventor failed to take the steps which otherwise might have divested Tabacalera and Messrs. Jorge and Romano of the right to assign the account receivable; that the Cuban government did not actually interfere with the right of Tabacalera to collect the account in the manner in which the company sought to pursue the remedy in federal court in Tampa.

The last mentioned portions of the decision of the Fifth Circuit are in conflict with those portions of the decision in *Brush,* which decided that under "intervention" procedure the interventor is vested with complete possession and control of a business enterprise to the exclusion of the officers, directors, shareholders, partners or *other persons* who would otherwise manage and conduct it. 256 F.Supp. 484. The decision in *Brush* was predicated upon that portion of Cuban law No. 647 which reads as follows (App. G, p. 57):

> "Interventors designated pursuant to the provisions of this law shall have the powers needed to administer and direct the enterprise or center of labor covered thereby and all the powers appertaining to its executives, for whom and in whose place and stead he is substituted, provided that the resolution itself that orders the intervention and names the interventor may specify the scope of his functions and powers."

The Fifth Circuit recognized that the intervention served to revoke any powers of the stockholders, officers and directors of Tabacalera, but said that it did not revoke the power of attorney because no formal revocation thereof was authorized or attempted. The court of appeals overlooked that a power of attorney can be revoked by operation of law, by death or incompetency of the principal or attorney-in-fact or by a formal revocation.

As an illustration of the revocation of a power of attorney by operation of law, a power of attorney authorizing an attorney-in-fact to collect and receive accounts and money due the principal is revoked by the bankruptcy of the principal. *In re Columbia Shoe Co.,* 289 F. 465 (2 Cir. 1923).

Petitioner submits that it is inconsistent and in conflict with *Brush* to say that intervention substitutes the interventor for the officers, stockholders and directors of a corporation but not for its attorneys-in-fact.

The decision of the Fifth Circuit also conflicts with the decision of this Court in *Sabbatino, supra,* where the Court set forth the test to be applied as to the effect of an expropriation decree, 376 U.S. 415, n. 17, as follows:

> " * * * Were any test to be applied it would have to be what effect the decree would have if challenged in Cuba. If no institution of legal authority would refuse to effectuate the decree, its 'formal' status—here its argued invalidity if not properly published in the Official Gazette in Cuba—is irrelevant. It has not been seriously contended that the judicial institutions of Cuba would declare the decree invalid."

The interventor appointed by the Cuban government claimed the right to collect the account receivable owed to Tabacalera by the petitioner, requested that the account be paid to Tabacalera in Cuba and stated that no person or entity whatsoever was authorized to collect the same in Tabacalera's name in our country. The real test as to the effect of the intervention and the acts of the interventor pursuant thereto would be what effect they would have if challenged in Cuba.

The Fifth Circuit readily recognized that Mr. Jorge, as assignee of Tabacalera, could not prevail, in Cuba or its courts, in any contest wherein he asserted that he was entitled to recover the account receivable, (App. B, p. 34, *infra*). The court of appeals, however, did decide that the intervention, the Cuban government and its interventor did not cancel or revoke the power of attorney and that the assignment of the account receivable made

pursuant to the provisions of the power of attorney was valid and authorized Mr. Jorge to collect the accounts receivable. That decision of the Fifth Circuit conflicts with the test required to be applied pursuant to the decision in *Sabbatino, supra.*

If the courts of Cuba would not uphold the power of attorney, as the court of appeals recognized, then the court of appeals erred, petitioner submits, in declaring valid the power of attorney and assignment made to Mr. Jorge pursuant thereto.

In the respects set forth above, the decision of the court of appeals sought to be reviewed conflicts with the decisions in *Brush* and *Sabbatino.*

COURT OPINIONS DELIVERED

A copy of the opinion of the court of appeals delivered upon the rendering of the judgment sought to be reviewed is appended as App. B, p. 22, *infra.* A copy of the findings of fact and conclusions of law of the district court delivered upon the rendering of its final judgment is appended as App. A, p. 1, *infra.*

JUDGMENT SOUGHT TO BE REVIEWED

A copy of the judgment of the court of appeals sought to be reviewed is appended as App. M, p. 75, *infra.*

CONCLUSION

For the foregoing reasons, it respectfully is submitted that this petition for a writ of certiorari should be granted.

DATED at Tampa, Florida, August 10, 1968.

Respectfully submitted,

William A. Gillen

WILLIAM A. GILLEN
FOWLER, WHITE, COLLINS,
GILLEN, HUMKEY & TRENAM
First Federal Building
Tampa, Florida 33602
Attorney for Petitioner

APPENDIX A

Findings of Fact and Conclusions of Law

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

Civil No. 3988-T

TABACALERA SEVERIANO JORGE, S.A.,
a Cuban corporation, and
SEVERIANO JORGE,

Plaintiffs,

vs.

STANDARD CIGAR COMPANY,
a Florida corporation,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action involves the legal effect of the intervention and take-over, in Cuba, by the Castro Government of Cuba of the plaintiff, Tabacalera Severiano Jorge, S.A. (hereinafter referred to as "Tabacalera"), a Cuban corporation whose business and assets were located in that country, and whose stockholders, directors and officers were Cuban citizens and nationals.

In July 1960, Tabacalera sold and delivered in Havana, Cuba, three separate shipments of leaf tobacco to the defendant, Standard Cigar Company, a Florida

corporation, for the aggregate sum of $100,894.28. The purchase price of the tobacco was to be paid in Havana.

On September 15, 1960, the Cuban Government intervened and took over Tabacalera, and an interventor was appointed who took control and management of Tabacalera and its assets. The interventor demanded that the defendant pay the aforementioned account receivable or debt in due course to Tabacalera in Havana, and advised the defendant that no one in the United States had authority to collect the account in Tabacalera's name.

Messrs. Severiano Jorge and Jose M. Romano, two of the stockholders, directors and officers who were ousted from the management and control of Tabacalera as a result of the intervention, requested the defendant to pay the account receivable or debt to Tabacalera in their care in Miami, Florida. When their requests were not complied with, this action was caused to be instituted in this court in October 1960, in the name of Tabacalera at the instigation of Mr. Jorge or Mr. Romano, or both.

The defendant moved to dismiss the complaint upon the ground of *forum non conveniens,* or, in the alternative moved the court to abstain from exercising jurisdiction herein because the matter was controlled solely by laws, resolutions, proclamations and decrees of the Cuban Government.

On April 1, 1961, a purported assignment from Tabacalera to Mr. Jorge, individually, of the account receivable was executed in the name of Tabacalera by Mr. Romano, who described himself as vice president and attorney-in-fact of the Cuban corporation.

The defendant filed its answer on April 5, 1961.

A final judgment was entered May 22, 1961, by the Honorable George W. Whitehurst, District Judge, dismissing the action on the ground of *forum non conveniens* and alluding to the act of state doctrine.

The United States Court of Appeals for the Fifth Circuit, on October 17, 1962, reversed the final judgment of the District Court, and held that neither of the aforementioned doctrines was applicable. *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,* 311 F.2d 438 (5 Cir. 1962); *Menendez Rodriguez v. Pan American Life Insurance Co.,* 311 F.2d 429 (5 Cir. 1962).

The Supreme Court of the United States, in *Standard Cigar Co. v. Tabacalera Severiano Jorge, S.A.,* 376 U.S. 780, 84 S.Ct. 1131, 12 L.Ed. 2d 82 (1964), vacated the opinion and judgment of the Court of Appeals and remanded the case to the Court of Appeals for further consideration in the light of *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed. 2d 804 (1964).

The Court of Appeals further considered the matter, and thereafter remanded the case to this court "to afford the parties opportunity to be heard upon development of such record as is found necessary by the District Court for its determination of the applicability of the Act of State doctrine to this complaint in accordance with the opinion of this court." *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,* 340 F.2d 708 (5 Cir. 1965); *Menendez Rodriguez v. Pan American Life Insurance Co.,* 340 F.2d 707 (5 Cir. 1965).

In this court an amended complaint was filed wherein Mr. Jorge, a citizen and national of Cuba now residing in Florida, was added as a party plaintiff. Mr. Jorge claims to be the assignee of and seeks to collect herein the indebtedness of the defendant to Tabacalera.

The defendant answered the amended complaint asserting, among other things, that the contracts for the sale and purchase of the tobacco were made and performed or to be performed in Cuba; that, under the act of state doctrine, this court should not sit in judgment on the acts of the Cuban Government in intervening or nationalizing, in Cuba, Tabacalera and taking over its business and assets, including the account re-

ceivable involved in this suit, that the stockholders, directors and officers of Tabacalera who were dispossessed and removed from authority and control of the Cuban corporation as a result of the intervention or nationalization and their purported assignee have no right or authority to maintain this action in the name of Tabacalera to recover the said account receivable; that the transactions and occurrenees involved herein are governed and controlled by the laws, resolutions, decrees and actions of the Cuban Government; that this action should be dismissed under the act of state doctrine or the doctrine of *forum non conveniens,* or both.

The Court of Appeals twice has held that the complaint cannot be dismissed upon the doctrine of *forum non conveniens.* The mandate to this court does not require or permit a determination of the applicability of that doctrine, and this court will not adjudicate that issue.

The parties have been afforded the opportunity to develop the record with respect to the applicability of the act of state doctrine. Depositions have been taken, admissions have been made, and affidavits have been filed. The plaintiffs have moved for a summary judgment. The defendant says that it, if any party, is entitled to summary judgment. The parties entered into a pre-trial stipulation. A pre-trial conference has been held. The briefs and oral arguments of the parties with respect to all pending matters have been considered.

In the light of the foregoing, this court makes the following findings of fact and conclusions of law concerning the applicability of the act of state doctrine.

FINDINGS OF FACT

The plaintiff, Tabacalera Severiano Jorge, S.A., a a corporation, was organized in 1954 under the laws of the Republic of Cuba. At all times material herein its principal place of business was in Havana, Cuba, it was engaged in the business of selling leaf tobacco for use in the manufacture of cigars, and its stockholders, directors and officers were Cuban citizens and nationals.

Tabacalera never qualified to do business, or had a place of business, in Florida or elsewhere in the United States.

The individual plaintiff, Severiano Jorge, is a citizen and national of Cuba, now residing in Miami, Florida. He claims to be the equitable owner of substantially all of the shares of capital stock of Tabacalera.

The defendant, Standard Cigar Company, is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Tampa, Florida. The defendant was at all times material herein and is engaged in the business of manufacturing cigars at its Tampa plant.

Since January 1, 1959, the Revolutionary Government of the Republic of Cuba, of which Fidel Castro is the premier, has been in power and control in Cuba. Since January 7, 1959, the Revolutionary Government has been and is recognized by the United States Government as the sovereign and legal government of the Republic of Cuba.

In July 1960, Tabacalera sold and delivered to the defendant, in Havana, Cuba; three shipments of leaf tobacco described as follows:

Date	Shipment	Sale and Purchase Price
July 1, 1960	7	$23,059.75
July 12, 1960	8	30,899.42
July 25, 1960	9	46,935.11
	Total	$100,894.28

The purchase price of each of the aforementioned shipments was payable by the defendant to Tabacalera in Havana, Cuba. Evidence introduced by the defendant shows that the purchase price for each shipment was due 90 to 120 days after the date of each shipment. Evidence introduced by the plaintiffs shows that the purchase price for each shipment was payable immediately upon the delivery thereof.

About August 12, 1960, Mr. Jorge left Cuba and never returned there. About September 1, 1960, Mr. Jose M. Romano, who was a vice president and the treasurer of Tabacalera and a citizen and national of Cuba, left Cuba, established a residence in Miami and never returned to his country.

Tabacalera continued in business in Cuba under the management of its stockholders, directors and officers, until September 15, 1960, when Tabacalera, along with the other corporations, partnerships and firms constituting the Cuban tobacco industry, were intervened and taken over by the Castro Government.

The intervention and seizure of the Cuban tobacco industry, including Tabacalera, were made pursuant to the authority of Cuban Law No. 647, of November 24, 1959, and Resolution No. 20260, of the Cuban Ministry of Labor, dated September 15, 1960.

Under Cuban Law No. 647, the Cuban Government was authorized to appoint an interventor for any corporation, partnership or business intervened. The law vested any such interventor with all the powers required to manage and direct the concern or enterprise intervened, and with all the authority regularly exercised by executives of the intervened party. Further, under the law, the interventor became subrogated to the standing, powers and privileges of the concern or enterprise intervened.

Resolution No. 20260 appointed Armando Lobato Alvarez the interventor for Tabacalera. Under Law No. 647 and the resolution, he was vested with complete

possession and control of Tabacalera as a business enterprise to the exclusion of the shareholders, directors, officers or other persons who would otherwise manage and conduct the affairs of the corporation.

In addition to the broad grant of powers vested in the interventor by Law No. 647, the resolution of intervention specifically bestowed upon the interventor, among many other powers, the authority to represent Tabacalera legally in courts and out of courts and any other facility necessary for the development of its function.

The purpose of the intervention and seizure of the Cuban tobacco industry by the Cuban Government, as stated in Resolution No. 20260, was to increase employment, to improve the quality of tobacco products, to guarantee the supply of tobacco to customary markets, to take over businesses which had been abandoned leaving numerous debts and many workers unemployed, and to normalize the situation in the tobacco industry, insuring the stability of workers and their jobs and the production of tobacco and tobacco products in general.

At the time Tabacalera was intervened, Messrs. Jorge and Romano had fled from Cuba to Florida and Tabacalera was heavily indebted to growers from whom it previously had purchased leaf tobacco during March, April and May 1960 and to others, including banks, in the aggregate amount of approximately $2,000,000.00.

For five or six weeks after the intervention, the interventor continued to do business and to sell and ship leaf tobacco in the name of Tabacalera. The interventor wrote letters to customers of Tabacalera soliciting new business and directing such customers to pay to the corporation in Havana, Cuba, all sums due for tobacco purchased before the intervention.

On September 16, 1960, the day following the intervention, from Miami Mr. Jorge wrote to the defendant on the letterhead of Tabacalera requesting that the

balance due for the last several shipments of tobacco be made to Tabacalera at Miami in his care as agent for it under a power of attorney executed by Tabacalera authorizing him to collect moneys due it.

On October 5, 1960, from Havana, the interventor wrote to the defendant on the letterhead of Tabacalera stating that the Cuban Government desired to continue to sell leaf tobacco to the defendant, forwarding a copy of the defendant's statement of account with Tabacalera, requesting that the same be settled in due time by remittances directly to the corporation in Havana, and informing the defendant that no person or entity whatsoever was authorized to collect the account in Tabacalera's name in the United States.

It was the position of the interventor that the Cuban Government was entitled to collect the account of the defendant and the accounts of other customers of Tabacalera who had purchased tobacco before the intervention.

On October 8, 1960, from Miami, Mr. Romano wrote to the defendant, on the letterhead of Tabacalera, sending a statement of the account for the balance due by the defendant to Tabacalera.

On October 12, 1960, the Miami attorneys who are prosecuting this litigation for the plaintiffs wrote to the defendant regarding the balance due from the defendant to Tabacalera, recognizing that the interventor laid claim to the balances due and urging the defendant not to recognize the claim of the interventor.

The defendant did not pay Tabacalera in care of the interventor in Havana or in care of Mr. Jorge in Miami. Thereupon, on October 26, 1960, Mr. Jorge or Mr. Romano, or both, caused this suit to be filed in the name of Tabacalera, as plaintiff.

On September 15, 1960, the interventor actually took over the management and control of Tabacalera, including its warehouses, the leaf tobacco in its ware-

houses, its offices, furniture, equipment, books, records, bank accounts and all other properties and assets. The interventor ousted those who had been in management and control of the corporation prior to the intervention, and those ousted have never had any further control or management of Tabacalera.

For several weeks the interventor continued to do business and to sell and ship leaf tobacco in the name of Tabacalera, but, thereafter, the business was conducted in the name of an agency of the Cuban Government. The brass nameplate bearing the corporation's name was removed from the building it had occupied, and the number "No. 14" was assigned to the building. The interventor continued to do business at the premises of Tabacalera, using the books, records, machinery, equipment and other property which had belonged to the corporation. The leaf tobacco business, however, was conducted in the name of the Ministry of Exterior Commerce.

While this suit was pending, on April 1, 1961, Mr. Romano, describing himself as vice president and attorney-in-fact of Tabacalera, executed in the name of Tabacalera a purported assignment to Mr. Jorge, individually, of all of Tabacalera's right, title, interest, claim and demand in and to certain accounts receivable and all sums due thereunder owing by the Antonio Company, a Florida corporation, and Standard Cigar Company, a Florida corporation.

Thereafter, on April 3, 1961, Mr. Jorge caused a suit to be filed in a state court in Florida in the names of Tabacalera Severiano Jorge, S.A., a Cuban corporation, and Severiano Jorge against the Antonio Company, a Florida corporation, Standard Cigar Company, a Florida corporation, and the Republic of Cuba. In that suit the plaintiffs sought a declaratory decree as to the rights and obligations of the parties therein, including the rights of Mr. Jorge as alleged sole stockholder of Tabacalera and assignee of the latter's claims against Antonio Company and Standard Cigar Company.

Shortly after the state court suit was instituted, and on May 21, 1961, Honorable George W. Whitehurst, one of the judges of this court, dismissed the case at bar on the ground of *forum non conveniens* and alluding to the act of state doctrine. An appeal ensued. The federal appellate course taken by this action has hereinbefore been described.

While the appeal in this federal court action was pending, the state court suit was dismissed, on November 28, 1961, upon the ground of *forum non conveniens* and because the actions of the Republic of Cuba in intervening and seizing Tabacalera were not reviewable by the state court under the act of state doctrine. *Jorge v. Antonio Company,* 19 Fla. Supp. 101 (Cir. Ct., Hillsborough County, Fla., 1961). The plaintiffs in the state court suit appealed, and the state appellate court determined to suspend proceedings in the state court appeal until this action in the federal court was tried and determined. *Jorge v. Antonio Company,* 151 So. 2d 467 (Dist. Ct. App. Fla., 2d Dist., 1963).

Throughout all the aforementioned litigation and until the present time, the Cuban Government, through its interventor or otherwise, has remained continuously in management and control of Tabacalera and its properties and assets. Although "intervention" procedure does not appear to effectuate a formal transfer of title from Tabacalera, its stockholders, directors and officers to the Cuban Government, the end result is indistinguishable in practical result from complete confiscation and nationalization. For more than six years the stockholders, directors and officers of Tabacalera at the time of its intervention have been ousted, without their consent, from all of the properties and excluded from any participation in the business of Tabacalera. Their rights to any receipts and profits have been eliminated. No compensation has been provided to them for their interest as stockholders or otherwise.

The Cuban Government has continued in the leaf tobacco business, trading domestically in Cuba and internationally, using the properties and facilities which

belonged to Tabacalera at the time of the intervention. It has collected accounts receivable due for tobacco sold before and after the intervention. Until the United States proclaimed an embargo on trade with Cuba, Proclamation No. 3447, February 6, 1962, 27 C.F.R.1085, the Cuban Government sold and delivered tobacco in Cuba and in the United States to purchasers who used the same in this country.

The Cuban Government, through its interventor or otherwise, did not institute or authorize the institution and maintenance of this action. Likewise, the Cuban Government did not assign or authorize the assignment by Tabacalera to Mr. Jorge of the account receivable by Tabacalera from the defendant. The Cuban Government has never ratified, approved or confirmed the institution and maintenance of this action or the assignment of the said account receivable to Mr. Jorge.

CONCLUSIONS OF LAW

The classic American statement of the act of state doctrine is that every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 416, 84 S.Ct. 923, 934, 11 L.Ed.2d 804 (1964); *Underhill v. Hernandez,* 168 U.S. 250, 252, 18 S.Ct. 83, 84, 42 L.Ed. 456 (1897); *American Banand Co. v. United Fruit Co.,* 213 U.S. 347, 29 S.Ct. 511, 53 L.Ed. 826 (1909); *Oetjen v. Central Leather Co.,* 246 U.S. 297, 38 S.Ct. 309, 62 L.Ed. 726 (1917); *Ricaud v. American Metal Co.,* 246 U.S. 304, 38 S.Ct. 312, 62 L.Ed. 733 (1917); *Shapleigh v. Mier,* 299 U.S. 468, 57 S.Ct. 261, 81 L.Ed. 355 (1937); *United States v. Belmont,* 301 U.S. 324, 57 S.Ct. 758, 81 L.Ed. 1134 (1937); *United States v. Pink,* 315 U.S. 203, 62 S.Ct. 552, 86 L.Ed. 796 (1942).

The act of state doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory. *Banco Nacional de Cuba v. Sabbatino, supra.*

Continuously since January 7, 1959, the United States Government has recognized and presently recognizes the Revolutionary Government of the Republic of Cuba, headed by Fidel Castro, as the legal and official government of Cuba.

The corporate plaintiff, Tabacalera, was an artificial entity, a creature of Cuban law, which could exist only by virtue of such law, and the rights, powers and authority of its stockholders, directors and officers must be determined by Cuban law. *Russian Reinsurance Co. v. Stoddard,* 240 N.Y. 149, 147 N.E. 703, 707, 708 (1925).

Tabacalera's domicile, place or places of business, properties and assets were solely in Cuba. Its stockholders, directors and officers were citizens and nationals of that country.

The intervention and take-over of Tabacalera, in Cuba, by the Cuban Government and the ouster of its stockholders, directors and officers from any management and control of the corporation clearly were public acts of state of Cuba.

What another country has done in the way of taking over property of its nationals, and especially of its corporations, is not a matter for judicial consideration here. Such nationals must look to their own government for any redress to which they may be entitled. *United States v. Belmont*, 301 U.S. 324, 332, 57 S.Ct. 758, 761, 81 L.Ed. 1134 (1937); *United States v. Pink*, 315 U.S. 203, 62 S.Ct. 552, 86 L.Ed. 796 (1942); *Steingut v. Guaranty Trust Co. of New York*, 58 F.Supp. 623 (D.C.N.Y. 1944), *aff'd* 161 F.2d 571 (2 Cir. 1947), *cert. dismissed*, 332 U.S. 753, 68 S.Ct. 81, 89, 90, 92 L.Ed. 339 (1947), *cert. den.* 332 U.S. 807, 68 S.Ct. 106, 92 L.Ed. 385 (1947).

No question of international law is involved in this action, because the acts of a state directed against its own nationals do not give rise to questions of international law. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 433, 84 S.Ct. 923, 943, footnote 37 (1964); *Banco Nacional de Cuba v. Sabbatino*, 307 F.2d 845, 861 (2 Cir. 1962), reversed on other grounds, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed. 2d 804 (1964); Zander. The Act of State Doctrine, 53 Am. J. Int'l Law 826, 836 (1959); *F. Palacio y Compania, S.A., et al. v. Gilbert P. Brush, et al.*, Case No. 61 Civ. 2299 (U.S.D.C., S.D.N.Y. 1966); *United States v. Belmont*, 301 U.S. 324, 332, 57 S.Ct. 758, 761, 81 L.Ed. 1134 (1937); *Pons v. Republic of Cuba*, 294 F.2d 925 (D.C. Cir. 1961) *cert. den.*, 368 U.S. 960, 82 S.Ct. 406, 7 L.Ed. 2d (1962); *M. Salimoff & Co. v. Standard Oil Co.*, 262 N.Y. 220, 186 N.E. 679 (1933).

Since the intervention and take-over of Tabacalera by the Cuban Government were not contrary to international law, the Hickenlooper Amendment to the Foreign Assistance Act of 1964, 22 U.S.C. § 2370 (e) (2) is not applicable to such acts.

The act of state doctrine is applicable herein, and proscribes this court from questioning the acts of the Cuban Government pursuant to which Tabacalera was intervened and its property and assets were taken over.

The legal effect of the intervention and later confiscation or nationalization of Tabacalera and its property and assets by the Cuban Government was to vest in such government, through its interventor or otherwise, the sole and exclusive right to demand payment of, to collect and to sue in the name of Tabacalera or otherwise to collect the account receivable which Tabacalera acquired and owned as a result of the sale of the three shipments of tobacco to the defendant.

The contracts covering the sale and purchase of the shipments of leaf tobacco involved were made in Cuba. Pursuant to the contracts, the tobacco was delivered by Tabacalera and accepted by the defendant in Cuba. The purchase price of the tobacco, whenever due, was to be paid to Tabacalera in Cuba. The situs of the contracts was in Cuba, and the rights and obligations of the parties thereto must be determined by Cuban law.

Florida and the United States had no contacts with the contracts and transactions which are relevant, material or of any consequence herein.

The sales and purchases of tobacco involved herein resulted in an account receivable or debt in connection with which Tabacalera was the creditor and the defendant was the debtor.

An account receivable is the right to receive payment of a debt, is a chose in action arising out of contract and is intangible personal property. *Boulevard Nat. Bank of Miami v. Air Metals Indus.*, 176 So.2d 94 (Fla. 1965).

The situs of intangible personal property is at the domicile of the owner. *First Nat. Bank of Boston v. State of Maine,* 284 U.S. 312, 329, 52 S.Ct. 174, 177, 76

L.Ed. 313 (1932); *Campbell v. Bagley,* 276 F.2d 28, 33 (5 Cir. 1960); *Marteney v. United States,* 245 F.2d 135 (10 Cir. 1957); *Investment and Sec. Co. v. United States,* 140 F.2d 894, 896 (9 Cir. 1944).

Florida holds to the foregoing rule. *Beverley Beach Properties v. Nelson,* 68 So.2d 604, 611 (Fla. 1953); *State ex rel United States Sugar Corporation v. Gay,* 46 So.2d 165 (Fla. 1950); *State ex rel Seaboard Air Line Railroad v. Gay,* 160 Fla. 445, 35 So.2d 403 (1948); *Smith v. Lummus,* 149 Fla. 660, 6 So.2d 625, 627, 628 (1942); *Wood v. Ford,* 148 Fla. 66, 3 So.2d 490, 495 (1941.)

The situs of an account receivable or debt is at the domicile of the creditor. *Cleveland, etc., R.R. Co. v. Pennsylvania,* 15 Wall. 300, 320, 21 L.Ed. 179, 187 (1873); *Farmers' Loan & Trust Co. v. State of Minnesota,* 280 U.S. 204, 50 S.Ct. 98, 74 L.Ed. 371, 65 A.L.R. 1000 (1930); *Vogel v. New York Life Ins. Co.,* 55 F.2d 205 (5 Cir. 1932), *cert. den.* 287 U.S. 604, 53 S.Ct. 9, 77 L.Ed. 525 (1932); *Little Audrey's Transportation Company v. Beverley Bank,* 236 F.Supp. 350 (S.D. Ill. 1964); *United States v. Royce Shoe Co.,* 137 F.Supp. 786 (N.H. 1956).

In *Cleveland, etc., R.R. Co. v. Pennsylvania,* 15 Wall. 300, 320, 21 L.Ed. 179, 187 (1873), the Supreme Court of the United States said:

> "Corporations may be taxed, like natural persons, upon their property and business. But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors, is simply to misuse terms. *All the property there can be, in the nature of things, in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be.*

Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations in numerous adjudications, but no number of authorities and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement."
(Emphasis supplied)

The foregoing statement was quoted with approval in *Farmers' Loan & Trust Co. v. State of Minnesota,* 280 U.S. 204, 50 S.Ct. 98, 74 L.Ed. 371, 65 A.L.R. 1000 (1930).

In *Vogel v. New York Life Ins. Co.,* 55 F.2d 205 (5 Cir. 1932), the United States Court of Appeals for the Fifth Circuit, in considering the situs of two life insurance policies issued in Texas insuring the life of a man who died while domiciled in Germany and payable to the decedent's executors, administrators and assigns, said, at p. 208:

"* * * Choses in action, such as these policies, are sometimes considered as having their situs at the domicile of the debtor, especially for purposes of their enforcement. They may be there garnisheed and attached. Chicago, R.I. & P.R.R. Co. v. Sturm, 174 U.S. 710, 19 S.Ct. 797, 43 L.Ed. 1144. Simple contract debts are there bona notabilia for the purpose of a nondomiciliary administration. 11 R.C.L., Excrs. and Admrs. § 67; Wyman v. Halstead, 109 U.S. 654, 3 S.Ct. 417, 27 L.Ed. 1068. *But as respects ownership of and the transfer of title to them, such choses are referred to the domicile of the owner, as in taxing ownership,* Cleveland, etc., R.R. Co. v. Pennsylvania, 15 Wall. 300, 21 L.Ed. 179; *or its transfer,* Farmers Loan & Trust Co. v. Minnesota, 280 U.S. 204, 50 S.Ct. 98, 74 L.Ed. 371, 65 A.L.R. 1000; Blodgett v. Silberman, 277 U.S. 1, 48 S.Ct. 410, 72 L.Ed. 749. * * * *"
(Emphasis supplied)

Although an account receivable may be enforced or sued upon at the domicile of the debtor, its situs as respects ownership and the transfer of title thereto is at the domicile of the creditor. The situs of the account receivable involved in this action was in Cuba at the domicile of Tabacalera. Whether due prior to or after the intervention, such account receivable was an asset, in Cuba, of Tabacalera.

The intervention and nationalization of Tabacalera by the Cuban Government did not purport to effect or effect property located in the United States. Tabacalera was a Cuban corporation, and its physical properties and tangible assets were in Cuba. As previously stated, the situs of the account receivable involved was in Cuba at the domicile of Tabacalera. There is no question here of giving extra-territorial effect to a confiscatory decree of a foreign state. This court must give effect to the acts of state of the Cuban Government, committed in Cuba and relating to intangible personal property situated there.

The basic issue in this action—whether the Cuban Government, through its interventor or otherwise, has or the former stockholders, directors and officers of Tabacalera have the right, in the name of Tabacalera, to demand payment of, to collect and to sue to collect the account receivable involved—turns upon the effect of the intervention and nationalization of Tabacalera.

The Cuban Government, through its interventor, demanded that the defendant pay the account receivable to Tabacalera, in Cuba, and informed the defendant that no one in the United States had authority to collect the account in Tabacalera's name. It was the position of the Cuban Government that the intervention of Tabacalera gave the interventor the exclusive power, right and authority to collect the account receivable.

Were any test to be applied as to the effect of the intervention and nationalization of Tabacalera, particularly with respect to the right and authority of the

Cuban Government concerning the said account receivable, it would have to be what effect the intervention and nationalization would have if challenged in Cuba. *Banco Nacional de Cuba v. Sabbatino, supra.*

In *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 415, 84 S.Ct. 923, 933-934, 11 L.Ed. 2d 804 (1964), in discussing the effect of an expropriation decree of the Cuban Government upon tangible personal property situated in Cuba, the court said, in footnote 17:

> "The courts below properly declined to determine if issuance of the expropriation decree complied with the formal requisites of Cuban law. In dictum in Hudson v. Guestier, 4 Cranch 293, 294, 2 L.Ed. 625, Chief Justice Marshall declared that one nation must recognize the act of the sovereign power of another, so long as it has jurisdiction under international law, even if it is improper according to the internal law of the latter state. This principle has been followed in a number of cases. See, e.g., Banco de Espana v. Federal Reserve Bank, 114 F.2d 438, 443, 444 (C.A. 2d Cir.); Bernstein v. Van Heyghen Freres Societe Anonyme, 163 F.2d 246, 249 (C.A. 2d Cir.); Eastern States Petroleum Co. v. Asiatic Petroleum Corp., 28 F.Supp. 279 (D. C.S.D.N.Y.). But see Canada Southern R. Co. v. Gebhard, 109 U.S. 527, 3 S.Ct. 363, 27 L.Ed. 1020; cf Fremont v. United States, 17 How. 542, 15 L.Ed 241 (United States successor sovereign over land); Sabariego v. Maverick, 124 U.S. 261, 8 S.Ct. 461, 31 L.Ed. 430 (same); Shapleigh v. Mier, 299 U.S. 468, 57 S.Ct. 261, 81 L.Ed. 355 (same). *An inquiry by United States courts into the validity of an act of an official of a foreign state under the law of that state would not only be exceedingly difficult but, if wrongly made, would be likely to be highly offensive to the state in question.* Of course, such review can take place between States in our federal system, but in that instance there is similarity of legal structure and an impartial arbiter, this Court, applying the full faith and credit provision of the Federal Constitution. (Emphasis supplied)

"Another ground supports the resolution of this problem in the courts below. *Were any test to be applied it would have to be what effect the decree would have if challenged in Cuba. If no institution of legal authority would refuse to effectuate the decree, its "formal" status—here its argued invalidity if not properly published in the Official Gazette in Cuba—is irrelevant. It has not been seriously contended that the judicial institutions of Cuba would declare the decree invalid."* (Emphasis supplied)

The existence of Tabacalera, the authority of its stockholders, directors and officers, its right to sue and the devolution of title to its assets must all be determined by Cuban law. *Russian Reinsurance Co. v. Stoddard,* 240 N.Y. 149, 147 N.E. 703, 707, 708 (1925), supra.

It could not be seriously contended that the judicial institutions of Cuba would declare that the Cuban Government, through its interventor or otherwise, does not have the right to collect the account receivable in the name of Tabacalera or otherwise.

When the Cuban Government intervened and took over Tabacalera, pursuant to Cuban Law No. 647 and Resolution No. 20260, it, through its interventor, became vested with the sole and exclusive right to manage and control the corporation and its assets, including the account receivable involved herein. The Cuban Government succeeded to all rights of management and control of the corporation which had been possessed by the stockholders, directors and officers thereof prior to the intervention. The intervention terminated the right and authority of such stockholders, directors and officers to act for or on behalf of Tabacalera.

By virtue of the intervention and take over of Tabacalera, the Cuban Government, by its interventor, became vested with the sole right, in the name of Tabacalera, to demand payment of, to collect and to sue to collect the account receivable in question. Later, up-

on the confiscation or nationalization of Tabacalera and its assets, the Cuban Government succeeded to all rights of Tabacalera with respect to the account receivable.

The Cuban Government, by its interventor, demanded payment of the account receivable from the defendant, but it did not institute or authorize the institution and maintenance of this action on the account receivable. Likewise, the Cuban Government did not authorize the assignment of or assign the account receivable from Tabacalera to Mr. Jorge.

Those who instituted or caused the institution and maintenance of this action in the name of Tabacalera had no right or authority to do so. Further, Mr. Romano did not have any right or authority to execute on April 1, 1961, in the name of Tabacalera, as its vice president and attorney-in-fact, and to deliver to Mr. Jorge an assignment of the account receivable.

The act of state doctrine is applicable whether the actions of a foreign recognized sovereign are questioned directly in a suit in which such government is a party or are questioned collaterally in litigation between private citizens. *Underhill v. Hernandez,* 168 U.S. 250, 252, 18 S.Ct. 83, 42 L.Ed. 456 (1897); *Oetjen v. Central Leather Co.,* 246 U.S. 297, 38 S.Ct. 309, 62 L.Ed. 726 (1917); *Ricaud v. American Metal Co.,* 246 U.S. 304, 38 S.Ct. 312, 62 L.Ed. 733 (1917); *Bernstein v. Van Heyghen Freres Societe Anonyme,* 163 F.2d 246 (2 Cir. 1947), *cert. den.* 332 U.S. 772, 68 S.Ct. 88, 92 L.Ed. 357 (1947); *Frazier v. Foreign Bondholders Protective Council,* 283 App. Div. 44, 125 N.Y.S. 2d 900 (1953); *Lamont v. Travelers Insurance Co.,* 281 N.Y. 362, 24 N.E. 2d 81 (1939); *Telkes v. Hungarian National Museum,* 265 App. Div. 192, 38 N.Y.S. 2d 419 (1942).

The Executive Branch of the United States Government has not acted in any manner to indicate that United States Courts should refuse to give effect to the

intervention and nationalization acts of the Castro Government which do not violate international law or to indicate that the Executive Branch had no objection to a judicial testing of the validity of such acts by the courts of this country.

The pleadings, depositions, admissions on file, affidavits and pre-trial stipulation show that there is no genuine issue as to any material fact, that the act of state doctrine is applicable herein and that the defendant is entitled to a judgment as a matter of law. An appropriate final judgment will be entered accordingly.

DONE and ORDERED at Tampa, Florida, this 19th day of October, 1966.

/s/ JOSEPH P. LIEB

UNITED STATES DISTRICT JUDGE

APPENDIX B

OPINION IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 24320

TABACALERA SEVERIANO JORGE, S.A., and SEVERIANO JORGE,

Appellants,

versus

STANDARD CIGAR COMPANY,

Appellee.

Appeal from the United States District Court for the Middle District of Florida.

(March 18, 1968.)

Before TUTTLE and WISDOM, Circuit Judges, and HEEBE, District Judge.

TUTTLE, Circuit Judge: This is an appeal from a judgment by the trial court dismissing a suit by a Cuban corporation and/or its sole stockholder as assignee for

the purchase price of approximately $100,000 worth of tobacco sold and delivered to the Standard Cigar Company, of Tampa, Florida, a few months before the Cuban government "intervened" the plaintiff company in Havana. The trial court held that the act of the Cuban government in appointing an "interventor" on September 15, 1960, was "an act of state" which took away from the officers, directors and stockholders, as well as all other persons, whatever rights had theretofore been held by the corporation in the unpaid balance owed by the Tampa-based Standard Cigar Company; that the United States courts are bound to accept as binding on them under the "Act of State Doctrine," such adverse action by the Cuban government, and that, therefore, neither the corporation Tabacalera Severiano Jorge, nor Severiano Jorge, as assignee of the corporation, resident in the state of Florida, could recover the account in the United States courts.

Since the District Court disposed of the case by entering a summary judgment of dismissal, the facts, of course, are to be taken in the light most strongly in favor of the losing party, that is to say, the plaintiffs in the court below, the appellants here. Viewed in such light, the facts are as follows:

Prior to 1954, Severiano Jorge y Cepero, a resident of Havana, Cuba, was successfully engaged in the tobacco business operating a sole proprietorship. In 1954, he incorporated under the name Tabacalera Severiano Jorge, S.A., owning all the equitable interest in the stock of the corporation. As such stockholder he caused one Higinio Miguel Caso, a tobacco buyer, to be elected president. However, at the time of such election, the corporation, at a duly held stockholders meeting was directed to execute and deliver to him, and to his accountant, a vice-president and the treasurer of the new corporation, Jose Romano, a broad power of attorney. This power of attorney appears to be about as broad as can conceivably be devised to give to these two named persons as

much power as is normally enjoyed by the officers and directors of an American corporation. They included the following:

> "FIRST: Administer, rule and govern all of the estate of the firm TABACALERA SEVERIANO JORGE, SOCIEDAD ANONIMA, whether consisting of real or personal property, which they may today possess or in the future acquire; guard its conservation and development; hire and discharge employees considered unsuitable; check all work; improvements and repairs which they may deem necessary to be done; obtain the necessary licenses and certificates of habitability; set forth all new constructions, recording same in the Registry of Properties; assess and determine the rents of income therefrom, pay any and all taxes, water bills and other obligations affecting said real or personal property, as well as those expenses arising from said constructions, repairs and improvements, exercising due and diligent care as any zealous and capable administrator should.
>
> . . . .
>
> "THIRD: To deposit in withdrawal from banks, bankers, organizations or business enterprises, any monies which may be therein or thereafter deposited, authorizing the necessary mandates in order to endorse and collect any sums in favor of said constituent company; being allowed to borrow money in the name of said Company, with or without guarantee, including overdraws, maintaining overdraws in any account or accounts which the Company may have with any banking institution in this City and the Island, so that the empowered attorneys herein designated may exercise any and *all acts of administration and dominion over personal property, real property, movables, and any other kind of possession in the name of the company,* as well as accept drafts, discount same, protest

same, and obtain monies from any banking institution with which it maintains business relations, including the acceptance of monies through overdraws, with or without interest.

. . . .

"SIXTH: *To collect and receive all proceeds, amounts, terms, rents, dividends and profits of the said estate, and all other amounts, produce, effects, values and fees which may under any title or for any reason be due and owing now or in the future, subscribing to said receipts and securities.*

"SEVENTH: *To settle disputes with regard to claims, lawsuits and questions of interest to the constituent company, in the terms, manner and forms which they may deem convenient, or through legal or friendly claims arbitrators, having the power to enforce the fulfillment of their decisions and the payment of the fines.*"

(Emphasis supplied).

For several years prior to 1960, the corporation sold substantial quantities of tobacco to the Standard Cigar Company of Tampa, Florida. It acquired this tobacco by buying it from tobacco farmers in Cuba. The sales of tobacco to Standard were on account without any written agreement as to the time and place of payment. Between July 1 and July 25, 1960, Tabacalera sold and shipped tobacco to Standard for the sales price of $100,894.28. At about this same time Severiano Jorge left Havana and came to the United States, where he took up his residence. During the summer months of 1960, he solicited approximately one million dollars worth of additional sales for Tabacalera, none of which were filled prior to September 15th, the date of the intervention. In June, Jorge personally loaned to Tabacalera $75,000 of his own funds and in August advanced an additional $600,000. Both of these amounts were put

on deposit in the Havana branch of a New York bank. A substantial part of this sum was utilized by Tabacalera to pay tobacco growers for purchases that had been made from them in Cuba. Part was for payroll purposes. In his affidavit in support of the appellants' motion for summary judgment, Jorge asserts "the funds thus advanced were proceeds derived from the sale of my cattle ranch. It was understood by everyone, including Higinio Miguel Caso [the then president of the corporation], that I would be repaid for said advances out of the proceeds of the resale of the tobacco to the companies in the United States, including defendants herein."

No testimony disputing this statement is in the record.[1]

During the months of July and August, Jorge made demands on Standard Cigar Company in the name of Tabacalera for payment of the outstanding balance due to the corporation. In his affidavit Jorge stated:

> "In accordance with the long standing custom and practice of the tobacco industry in Cuba the purchase price for tobacco was due no later than the Monday following the buyer's acceptance. While I made certain limited exceptions which were granted only after negotiations therefor, the accounts of the defendants herein for the shipments made in July, 1960, were due and payable immediately upon the receipt of the tobacco by the purchasers. There was no custom, agreement or understanding between the corporation and these defendants that they would be allowed between 90 and 120 days after each of the shipments made in July, within which to pay the purchase price therefor."

---

[1] While we mention this fact as a part of the total background of the case, our disposition of the case does not depend upon the existence of the informal arrangements here depicted.

The latter part of this affidavit was in response to an affidavit by Stanford Newman, president of the Standard Cigar Company. Newman alleged that the tobacco in question, "was purchased by purchase orders and accepted in Havana, Cuba, and was shipped f.o.b. Havana, Cuba, to the defendant in Tampa, Florida, as aforesaid. In accordance with the customs, agreements and understandings between the plaintiff and the defendant, the purchase price of each shipment was due and payable by the defendant to the plaintiff in Havana, Cuba, 90 to 120 days after each shipment."

Presumably the trial court considered that it was not relevant to the decision of the case that it resolve the conflict in this testimony, which on the one hand provided for payment well in advance of the "takeover" of September 15th, and which, on the other hand, provided for payment at a date that had not yet arrived when the interventor was put in charge in Havana. We agree that it is immaterial whether the payments were actually payable prior to September 15th or were owing but payable at a later date.

On the 15th day of September, 1960, the revolutionary government of the Republic of Cuba promulgated resolution number 20260 of its Ministry of Labor, by which it "intervened" the Cuban tobacco industry, including the plaintiff corporation. While it may be assumed that the revolutionary government, which, at the time, was all powerful in Cuba, could in actual effect have physically done just about what it wished to do with respect to any property or person within its territorial reach, we think it important that the precise powers given to the interventor named for this corporation be carefully studied. These powers are contained in a resolution published by the Cuban Minister of Labor. This resolution directs that interventors are appointed to do the following things:

"THIRD:—Substitute in position and degree, the Directors of the intended industries intervened, with the Interventors designated above, with the power to open bank accounts, open credit, accept, endorse discount or in any other form negotiate payments, letters or any other commercial documents, solicit or obtain credit, carry on the operation of buying or selling the National or foreign currencies, take money or loans with or without guarantees, stipulate type of interests, maturity, location of payments, class of currency and all other particulars esteemed convenient. Contract when considered opportune for payments of current accounts. Attach, mortgage or in any way encumber any benefits pertaining to the enterprises; buy, exchange, sell or in any other form operate in or with shares, bonuses, or other valuables, rent vaults, depositing in same and withdrawing its contents liberally; contract conditions of employment with the laborers and employees of these enterprises; also, subscribe collective contracts of work in their name, pay the stipulated wages of employees and laborers; represent the enterprises legally in courts and out of courts and say other facility necessary for the development of its function.

"FOURTH:—Order the designated Interventors to take inventory and appraisal of the goods and furniture pertaining to the intervened enterprises.

"FIFTH:—Notify all parties in the proper legal procedure."

One Armando Lebato Alvarez was named as the interventor of Tabacalera and he physically took possession of the premises, books and records of Tabacalera Severiano Jorge in Havana, Cuba, including tobacco in the warehouse, which, according to Jorge's undisputed affidavit, had a value in excess of $1,000,000.00. Jorge,

the individual, learned of this fact on September 15th in a telephone conversation in which he was reporting to his company in Havana that he had made certain sales on behalf of the company. Thereupon, on September 16th, he wrote to Standard Cigar Company a letter demanding payment on account of Tabacalera Severiano Jorge, S.A., in his care.[2]

Enclosed in the letter was a copy of a duly executed power of attorney incorporating the relevant by-laws of Tabacalera Severiano Jorge, and the certificate of the action by the stockholders and the certificate of the appropriate officers showing that it had been recorded with the public instruments of the notary who supervised the signing of the document. The terms of this power of attorney, so far as here relevant, are quoted above.

A few days later, on October 5th, Standard Cigar Company received a letter from the interventor, in which he stated that the Cuban revolutionary government was interested in maintaining its tobacco business with the United States, and then stated:

> "Consequently, this intervention will receive with great pleasure your new orders to the firm of Tabacalera Severiano Jorge, S.A., Havana, Cuba; at the same time, we wish to advise you that your debt balance with this firm is $100,894.28, which

[2] This letter is as follows:

"Regarding the balance due to Tabacalera Severiano Jorge, S.A. for the last several shipments, it is requested that payment be made to me as agent for the company at Miami, Florida. I hold an unconditional and unqualified power of attorney authorizing me to collect moneys due to the company. I am enclosing herewith a copy. The power of attorney is still in full force and effect, and I have been informed by counsel that I am authorized under the power of attorney to collect moneys due to the company for balances owed to it.

"I would appreciate it if you would send the balance of our account to Tabacalera Severiano Jorge, S.A. to my care.

"Very truly yours,
SEVERIANO JORGE."

should be settled in due time by means of remittances directly to same, no person or entity whatsoever being authorized to effect collections in its name in your country."

The Standard Cigar Company having failed to make payment of the amount owing for the tobacco, demand was made on behalf of Tabacalera, acting through Jorge, by counsel, on October 12, 1960. This demand was based again on the "unconditional and unqualified power of attorney authorizing [Jorge] to collect moneys due to the company." No reply having been received to this demand, Tabacalera Severiano Jorge, S.A., the corporation, filed suit for the amount due on October 26, 1960. This suit was met with a motion to dismiss on the ground of *forum non conveniens*. Before acting on this motion, the district court directed that the defendant file its answer. Thereafter, and before the answer was filed, Jose Romano, vice president of the corporation, *and one of the joint holders of the power of attorney* above referred to, executed an assignment in the following terms:

"ASSIGNMENT

"KNOW ALL MEN, that TABACALERA SEVERIANO JORGE, S.A., a Cuban corporation, in consideration of the sum of Ten Dollars ($10.00) to it in hand paid by SEVERIANO JORGE, S.A., a Cuban corporation, in consideration of the sum of Ten Dollars ($10.00) to it in hand paid by SEVERIANO JORGE, has sold, transferred and assigned and by these presents does sell, transfer and assign to the said SEVERIANO JORGE all of the said corporation's right, title, interest, claim and demand in and to certain accounts receivable and all sums due thereunder owing by the Antonio Company, a Florida corporation and Standard Cigar Co., a Florida corporation, and does hereby vest in the said Severiano Jorge full power and authority to sue for, collect and demand the payment of said sums.

"IN WITNESS WHEREOF, the said TABACALERA SEVERIANO JORGE, S.A. has caused these presents to be executed by its duly authorized officer this 1st day of April, 1961."

Thereafter, defendant filed its answer as required by the court, and as a "fourth defense" alleged affirmatively:

"On or about the 1st day of April, 1961, the plaintiff corporation assigned to Severiano Jorge, in writing, any right of action plaintiff had against the defendant, Standard Cigar Company. A true copy of said assignment, marked Exhibit I is hereto attached, and is made a part hereof by special reference as if set forth herein in haec verba."

It is of especial significance to note that in none of the subsequent pleadings has the defendant amended or modified its allegation that the plaintiff had "assigned to Severiano Jorge, in writing, any right of action plaintiff had against the defendant, Standard Cigar Company." In a subsequent defensive pleading, Standard contended that the assignment "or purported assignment" was invalid because not within the power of the corporation to execute.

The trial court then sustained the motion to dismiss for *forum non conveniens*. This judgment was reversed by this court. Standard filed its petition for certiorari to the United States Supreme Court, which then vacated our judgment in the following language:

"The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of Banco Nationale de Cuba v. Sabbatino, 376 U.S. 398, 11 L.Ed. 2d 804, 84 S.Ct. 923."

Standard Cigar Co. v. Tabacalera Severiano Jorge, 376 U.S. 780.

Upon receiving the Supreme Court mandate, we entered the following opinion:

> "For the reasons given in per curiam opinion filed this date in Menendez Rodriquez v. Pan American Life Insurance Company, et al, 5 Cir., 340 F. 2d 707 . . . this case is hereby remanded to the district court to afford the parties opportunity to be heard upon development of such record as is found necessary by the district court for its determination of the applicability of the Act of State Doctrine to this complaint."

The need for remanding the case to the district court arose because of the Supreme Court's direction to us that the case have further consideration in light of its decision in *Banco Nationale de Cuba v. Sabbatino,* 376 U.S. 398.

It goes without saying that if the state of facts in the case before us is parallel to that in *Sabbatino,* then it would be necessary for the district court to dismiss the suit in the trial court because, otherwise, the courts would be doing violence to what is known as the "Act of State Doctrine."

Since the appellee's defense here, based solely upon its contention that the government of Cuba has, by laws suitable to its needs, acquired every right and interest which Tabacalera owned in this account receivable, is dependent upon the act of State Doctrine, we must at the outset consider what is meant by this legal principle.

The Supreme Court said in *Banco Nationale de Cuba v, Sabbatino:*

> "The classic American statement of the Act of State Doctrine, which appears to have taken root in England as early as 1674, Blad v. Bamfield, 3 Swans. 604, 36 English Reports 992, and began to

emerge in the jurisprudence of this country in the late 18th and early 19th century . . . is found in Underhill v. Hernandez, 168 U.S. 250, where Chief Justice Fuller said for a unanimous court (page 252):

'Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of a government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.' "

The Court then said:

"None of this Court's subsequent cases in which the Act of State Doctrine was directly or peripherally involved manifest any retreat from Underhill. See American Banana Co. v. United Fruit Co., 213 U.S. 347; Oetjen v. Central Leather Company, 246 U.S. 297; Ricaud v. American Metal Co., 246 U.S. 304; Shapleigh v. Mier, 299 U.S. 468; United States v. Belmont, 301 U.S. 324; United States v. Pink, 315 U.S. 203. On the contrary in two of these cases, Oetjen and Ricaud, the doctrine as announced in Underhill was reaffirmed in unequivocal terms." 376 U.S. 398, 416.

In the reconsideration we are required to make of the present case by the Supreme Court's mandate, we look first to see to what extent the facts are similar. Two points of dissimilarity are immediately apparent. The first need not be fully developed because it may really be a distinction without a difference if all of the facts were fully known, and because appellants need not rely upon this circumstance as a basis for the relief they seek here. This difference is that in the *Sabbatino* case the act of the Cuban government was a direct and

open confiscation of the property of the Cuban-based sugar corporation, whereas in the instant case, the act of the Cuban government amounted only to "in intervention" for the period of one year.[3]

The really important point of difference between the facts of this case and that of *Sabbatino* is that the subject of the confiscation in the latter case was a ship's cargo of sugar which was present in the territorial waters of Cuba—tangible personal property—whereas in the case before us the subject of the alleged "taking" by the government of Cuba is a credit owed to the Cuban corporation, (albeit arising out of a Cuban transaction) by an American creditor domiciled in Tampa, Florida.

To begin with, it goes without saying that if the effort by Severiano Jorge to obtain as assignee of Tabacalera money which was admittedly due and owing to the corporation depended upon either his physical self-help within the territory of Cuba or upon his showing that the courts of Cuba would hold in his favor, there would be no practical basis for his claim here, because it is clear that the Cuban government would physically prevent the former and would "judicially" foreclose any rights as to the latter. Such conduct by the Cuban government, while offensive to countries like the United States, operating under constitutional limitations of governmental power, would be beyond the power of this country to control because it would be conduct within Cuba. Thus, it would fall clearly within the Act of State Doctrine, for any effort to attack such conduct of the Cuban government would be in violation of the

---

[3] It is argued in the *brief* of the appellee that somehow after the end of the year the Cuban government acquired some additional absolute power or rights as to the assets of Tabacalera, amounting in effect to confiscation. The record is void of any proof of what actually was the status of affairs, although we may feel fairly certain that the Cuban government has not affirmatively relinquished whatever rights it had to supplant the original directors and stockholders and officers of this corporation.

principle that the courts of the United States "will not sit in judgment on the acts of the government of another *done within its own territory.*" (Emphasis added.) See *Underhill v. Fernandez, supra.*

The question then, naturally, arises whether the Act of State Doctrine prevents United States Courts from deciding a case as to which it has personal jurisdiction of the parties and the *res* merely because the government of a foreign state would, if it had the parties before it, as well as the *res,* decide it differently.

Thus, we come straight to the question whether the Act of State Doctrine requires that our courts reject a claim, otherwise cognizable by them, purely on the assumption that if all the parties and the thing in issue were present in Cuba the Cuban government would act in a manner most destructive of private property and most beneficial to itself as distinguished from its citizens.

We conclude that the Act of State Doctrine does not require such holding.

Here, even assuming that the Cuban government would, had it thought it necessary to do so, have expressly given to Senor Alvarez, its interventor, specific authority to sue to collect outstanding accounts, *which it did not,* and that it would, if it had thought it necessary to do so, have expressly given to him the powers of attorney, *which it did not,* the significant power to cancel, terminate or rescind all outstanding powers of attorney, 'which it did not, the significant fact is that the interventor did neither of these things. The only proof of the Cuban law that was before the trial court was in the deposition testimony of three Cuban lawyers, by whom it was made clear that the broad power of attorney executed by the corporation in favor of Jorge and Romano could be revoked only by a similar docu-

ment filed in the same registry in which the power of attorney had been filed. Exen though we were to assume, contrary to the available evidence, that the power of attorney could be revoked in Cuba by a less formal act, there is an utter lack of proof that the interventor attempted to withdraw or revoke the power of attorney, probably since he knew nothing about it. The burden of proving such a revocation was, as a matter of defense, on the defendant below.

Thus, it is, that on the record before us, it stands undisputed that Jorge and Romano, as of the time they made demand on Standard Cigar Company had an outstanding, unconditional power of attorney which authorized them expressly to make the collection which they sought to make. This, of course, had been given to them long before the interventor was appointed. Then, it also follows that even after the interventor was appointed and went into possession of whatever was available to him to reach in Cuba, he had no authority to, and did not attempt, even then, to revoke the outstanding power of attorney. Thus it is, that on April 1, 1961, Romano had full power to execute the assignment of the corporation's claim to Jorge.[4]

We conclude, therefore, that an analysis of the acts of the Cuban government, giving absolutely complete and full effect to them, requires us to hold that through inadvertence, mistake or purposeful handling of this account, the Cuban government did not actually by any

---

[4] While Standard makes some effort to inquire as to what consideration flowed to the corporation in return for the assignment executed to Jorge, this is utterly irrelevant so far as Standard is concerned, for Standard has no concern about the management of the creditor corporation with which it is dealing. However, in order to make it appear that all the equities favored the granting of such assignment, even beyond the fact that all equitable ownership in the stock belonged to Jorge, the evidence is undisputed that Jorge himself had concurrently advanced to the corporation six times as much as he was suing for in expectation of being able to obtain a partial reimbursement by the collection of this claim.

of its official acts, interfere with the right of Tabacalera Severiano Jorge, S.A. to collect this account in the manner in which the company sought to pursue the remedy in the United States courts in Tampa. This would be true even if the credit here be deemed to have a "situs" in Cuba, or even if it be deemed to be in all material aspects the same as tangible property. *Cf. Banco Nationale de Cuba v. Sabbatino, supra.* This is true because the government and the interventor *on this record* failed to take the steps which might otherwise have divested Tabacalera and Jorge and Romano of the power to assign this claim. We see no reason to create a further power of confiscation in the interventor than the government gave him.

Here, simply stated, there was no confiscation of the kind exercised by Cuba as to the sugar in *Sabbatino.* There was in effect a limited temporary receivership which did not attempt to cancel an outstanding power of attorney.

Moreover, we conclude that in light of the fact that the government of Cuba did not have physical control over the species of property represented by this claim against Standard Cigar Company, it would not be a violation of the Act of State Doctrine for the courts to hold that, had the Cuban government taken all of the steps that its unlimited power would have permitted it to take, such conduct by the Cuban government would not be recognized by the United States courts. Nothing in the *Sabbatino* case requires that the doctrine be extended thus far. It should be noted that in the *Sabbatino* case the *res* that was subject to confiscation by the Cuban government was physical property present in Cuba; whereas the *res* here is a credit owed by an American company in Tampa, Florida. Much is said by the appellees in this case undertaking to show that the situs of the debt owed by Standard Cigar to Tabacalera was in Havana, Cuba. The situs of intangible property is about as intangible a concept as is known to the law.

The situs may be in one place for ad valorem tax purposes, *Farmers Loan and Trust Co. v. State of Minnesota,* 280 U.S. 204; it may be in another place for venue purposes, i.e., garnishment, *Chicago R.I. & P.R. Co. v. Sturm,* 174 U.S. 710; it may be in more than one place for tax purposes in certain circumstances, *Curry v. McCanless,* 307 U.S. 357; it may be in still a different place when the need for establishing its true situs is to determine whether an over-riding national concern, like the application of the Act of State Doctrine is involved.

The Supreme Court had determined in the *Sabbatino* case that in deciding the situs of a debt such as the one before us, as an ingredient in determining whether the governmental acts of Cuba withdraw it from the jurisdiction of American courts is a matter of federal law and not of state law. The Court said:

> "However, we are constrained to make it clear that *an issue* concerned with a basic choice regarding the competence and function of the Judiciary and the National Executive in ordering our relationships with other members of the international community must be treated exclusively as an aspect of federal law." (Emphasis supplied.) 376 U.S. 398, 425.

Here, resolution of the issue of situs of the debt determines whether the Act of State Doctrine applies.

Therefore we must fashion a rule of federal law to determine whether in dealing with this particular species of intangible property the overriding concern of international relations of the United States and Cuba requires that we give effect to the confiscatory policies of the Cuban government to funds which are fully within the physical control of the American courts, and clearly without the physical control of the courts of the government of Cuba.

In doing so, we recognize that no such rule can be fashioned that will violate the principles enunciated by the Supreme Court in *Sabbatino*. We find that principle expressed in the following language:

> "It is also evident that some aspects of international law touch more sharply on national nerves than do others; the less important the implications of an issue are for our foreign relations, the weaker the justification for exclusivity in the political branches . . . Therefore, rather than laying down or reaffirming an inflexible and all encompassing rule in this case, we decide only that the judicial branch will not examine the validity of a taking of property *within its own territory* by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or unambiguous agreement regarding controlling legal principles, even if a complaint alleges that the taking violates customary international law." 276 U.S. 398, at 428.

The underlying thought expressed in all of the cases touching on the Act of State Doctrine is a common-sense one. It is that when a foreign government performs an act of state which is an accomplished fact, that is when it has the parties and the *res* before it and acts in such a manner as to change the relationship between the parties touching the *res*, it would be an affront to such foreign government for courts of the United States to hold that such act was a nullity. Furthermore, it is plain that the decisions took into consideration the realization that in most situations there was nothing the United States courts could do about it in any event.

In the case before us, it cannot be doubted that whatever may be the ordinary concept of the situs of a debt, the government of Cuba was not physically in a position to perform a *fait accompli* in the nature of

the acquisition by the Cuban government or its interventor of the money owed to Tabacalera by Standard Cigar Company. It was simply not within the power of Cuba to accomplish this result. To this extent, we think it clear that whatever efforts were made by the Cuban government dealing with Tabacalera, these acts are to be recognized under the Act of State Doctrine only insofar as they were able to come to complete fruition within the dominion of the Cuban government. As to other matters we conclude that they were not a "taking of property *within its own territory*" within the language used by the Supreme Court in *Sabbatino*.

The Supreme Court has fully recognized in its decisions over the years that the situs of intangible personal property is a shifting concept. The Court, in *Curry v. McCanless, supra,* fully discusses the varying concepts of situs of intangible personal property for tax purposes. 307 U.S. 357, at page 368.

Here, we do not have a case in which affected third parties are litigating over the accomplished fact of "takeover" of an asset in Cuba. We are dealing rather with a change in the form of the asset from an account receivable into cash, which can be accomplished only in the courts of the United States. In attempting to fashion a rule fixing the situs of an indebtedness for the very limited purpose of deciding whether it is "property *within* [*Cuba's*] *own territory,*" we find no compelling requirement that we accept the fiction that the situs is irrevocably at the domicile of the creditor, a fiction sometimes used for other commercial purposes. For the purpose of our inquiry we find this debt was not property in Cuba.

We conclude, therefore, that it was error for the trial court to dismiss the complaint by summary judgment. On the record before the trial court the appellants were entitled to have their motion for summary judgment granted. Such failure by the trial court is not, of

course, appealable as such, because an order *denying* a motion for summary judgment is an interlocutory order in the case and not a final order. However, it appears that there is no material issue of any relevant fact under the law of the case as we conceive it to be. Both parties have had more than ample time to develop pleadings and fact issues and it now seems appropriate to direct that judgment be entered for the appellant Jorge as assignee of Tabacalera Severiano Jorge, S.A., a status which the defendant, by its pleadings, concedes he holds if the Act of State Doctrine does not control the case.

The judgment is REVERSED and the case is REMANDED to the district court with directions that judgment be entered in favor of Severiano Jorge.

APPENDIX C

OPINION IN RELATED CASE

TABACALERA SEVERIANO JORGE, S. A., and Severiano Jorge,

Appellants,

v.

STANDARD CIGAR COMPANY,

Appellee.

No. 24784

United States Court of Appeals

Fifth Circuit

March 18, 1968.

The United States District Court for the Middle District of Florida, Joseph P. Lieb, Chief Judge, entered summary judgment for the defendant, and the plaintiffs appealed. The Court of Appeals, Tuttle, Circuit Judge, held that appeal would be dismissed by Court of Appeals on ground of mootness, where Court of Appeals had determined in companion case that plaintiff, who was sole stockholder of plaintiff corporation, was entitled to summary judgment.

Appeal dismissed for mootness.

Appeal and Error 790(3)

Appeal by plaintiffs from judgment of Federal District Court to Court of Appeals would be dismissed by Court of Appeals on ground of mootness, where Court of Appeals had determined in companion case that plaintiff, who was sole stockholder of plaintiff corporation, was entitled to summary judgment.

Phil Newcomm, Shutts & Bowen, Miami, Fla., for appellants.

William A. Gillen, Fowler, White, Collins, Gillen, Humkey & Trenam, Tampa, Fla., for appellee.

Before TUTTLE and WISDOM, Circuit Judges, and HEEBE, District Judge.

TUTTLE, Circuit Judge:

This is a companion case to Tabacalera Severiano Jorge, S. A. v. Standard Cigar Company, 392 F.2d 706, which has been decided this day.

Following the summary judgment rendered by the district court for the defendant, Standard Cigar Company, in the other case, and the appeal taken therefrom to this court, the individual plaintiff, Severiano Jorge, filed his petition for relief from final judgment in the District Court for the Middle District of Florida, on February 14, 1967. In his petition he alleged that since the taking of the aforesaid appeal, certain events had transpired which formed the basis, under Rule 60(b), Federal Rules of Civil Procedure, for setting aside the judgment. These events, he alleged, were that on January 27, 1967, Jorge had been naturalized as an American citizen by an order of the United States District Court in and for the Southern District of Florida. It was alleged that in the prior decision in the case on appeal, the trial court had held in effect that since Severiano Jorge was a Cuban national, Title 22 U.S.C.A. § 2370(e)(2), the so-called Hickenlooper amendment, was not applicable and relief could not be afforded him on that basis.

By this petition, the individual appellant Jorge contends that Rule 60(b) permits the setting aside of the judgment by reason of this change in his citizenship.

By reason of the decision and judgment of this court in the companion case, this appeal becomes moot. Under the decision of this court Jorge is granted the relief which he sought in the trial court in the main action, without reference to his American citizenship. Thus, of course, any petition seeking the setting aside of that judgment is now unnecessary since this court has now set it aside as erroneous.

This appeal is dismissed for mootness.

APPENDIX D

Cuban Decree No. 1384, of April 9, 1951

"WHEREAS, Law No. 13, of December 23, 1948 provided that the currency of the United States of America shall cease to be legal tender and to have debt redeeming force in the territory of the Nation one year after the date on which the 'Banco Nacional de Cuba' (National Bank of Cuba) commenced operating, unless the Chief Executive, on the recommendation of said Bank, should extend that period for another period not exceeding one year. And,

WHEREAS, the above mentioned authority to extend for one year the status of legal tender and debt redeeming force of the United States currency in the national territory ought to be construed to cover the possibility of extending said period for a shorter additional period, and to provide for its expiration in such a way that the effects of one and the other provision will not extend beyond said additional one year period. And,

WHEREAS, the 'Banco Nacional de Cuba' commenced operating on the 27th day of April, 1950, and then, within the first one year period allowed by said Law No. 13, of December 23, 1948, the Board of Directors thereof requested this Chief Executive to extend the status of legal tender and debt redeeming force of the United States currency in the national territory until June 30, 1951. And,

WHEREAS, the Board of Directors of said 'Banco Nacional de Cuba' has further recommended to this Chief Executive the adoption of certain supplementary regulations in connection with the cessation of said legal tender status and debt redeeming force on June 30, 1951.

NOW, THEREFORE: In pursuance of the powers vested in me by the Constitution and other statutes of the Republic, on the recommendation of the 'Banco Nacional de Cuba', as endorsed by the Minister of the Treasury, and with the approval of the Council of Ministers, I hereby,

RESOLVE:

First: To extend the status of legal tender and debt redeeming force of the currency of the United States of America in the territory of the Nation until the thirtieth day of June of the current year. Second: Beginning on the date on which the United States currency shall cease to be legal tender and have debt redeeming force in the territory of the Nation, all obligations contracted or payable in the national territory shall be expressed and settled in national currency pursuant to the provisions of Law No. 13, of December 23, 1948, subject to no exception other than those specified in Articles 96, 98 and 113 thereof. The debtors of obligations not included in said exceptions and the payment whereof in United States currency has been stipulated or agreed upon prior to the cessation of such legal tender status and such debt redeeming force, may settle such obligations at par through delivery of national currency in the same amounts as those previously expressed in United States dollars.

Third: Upon the cessation of the status of legal tender and debt redeeming force of the United States currency, all bank deposits theretofore kept under such denomination shall be subject to the provision contained in Article 98 of Law No. 13, of December 23, 1948, which shall be applied in accordance with the following rules:

(a) Banks may continue accepting and keeping deposits in United States currency and in any other

foreign currency, but adhering to the provisions of this Decree and of Article 113 of Law No. 13 of December 23, 1948.

(b) All withdrawals of funds shall be made by means of non-transferable and non-negotiable documents drawn in accordance with the following form:

Non-transferable _____ Non-negotiable
(Name of the Bank)

Account No. _____
(Place and date)

Please pay to myself the sum of _____
_____/100 Dollars and charge same to my account in United States Currency.

$_____ _____
(Signature of Depositor)

(c) If the Bank should choose, pursuant to the above-mentioned Article 98 of Law No. 13, of December 23, 1948, to pay in United States banknotes the withdrawals from bank deposits kept under the denominations of United States currency, such payments shall be made without deducting any expenses, commissions or premiums at the expense of the depositor, who shall be entitled to the free disposition and possession of said currency; and,

(d) If the bank should choose to pay either in dollar drafts on New York or in national currency at the then current exchange rate, the election between one and the other form of payment under said Article 98 of Law No. 13 of December 23, 1948 shall be a privilege of the depositor, who by requesting the payment in a dollar draft shall be deemed to assume the customary transfer expenses and taxes.

Fourth: The 'Banco Nacional de Cuba' is hereby directed to attend to the enforcement of this Decree, and to adopt whatever additional regulations may prove necessary.

Done at the Presidential Palace in Havana this 9th day of April, the year 1951.

CARLOS PRIO SCARRAS
President

Felix Lancis
Prime Minister
Jose R. Alvarez
Minister of the Treasury
(Official Gazette #92, of April 20, 1951)"

APPENDIX E

Cuban Law No. 568, of September 29, 1959

"Article 1.—For the purposes of this law, the following are considered felonies of monetary, contraband. . . . (6) To export currency or securities, or to transfer funds to points abroad by means of checks, transfers, drafts, letter-orders, orders of payment, compensations, travellers' checks, letters of credit, reimbursements of collections, purchases or sales of passage tickets or through any other similar means, regardless of the origin or source of the funds, except for those cases authorized by the Currency Stabilization Fund, through a member bank or a firm duly authorized by Banco Nacional de Cuba.

. . . . . (10) To receive and credit to bank accounts kept abroad, or to transfer to third parties collections made abroad for business transactions or services rendered in Cuba, regardless of the source or origin of the respective funds.

Article 2.—The persons guilty of the felony of curreney contraband referred to in the preceding article shall be liable to a penalty of imprisonment for from 6 months and 1 day to 3 years, or a fine of one to two thousand quotas, or both.

Article 3. a) Any person who sells or in any way assigns, transfers, or transmits currency, checks, drafts, orders of payment, travellers' checks or any similar paper in foreign currency shall be liable to imprisonment for from 6 months and 1 day to 3 years, or to a fine of one to two thousand quotas, or both.

Article 6.—. . . . . The Currency Stabilization Fund is expressly authorized to order the intervention of any company, business or entity which is presumed to have infringed the provisions of this law."

APPENDIX F

Cuban Law No. 647, of November 24, 1959

TRABAJO.

OSVALDO DORTICOS TORRADO, Presidente de le Republica de Cuba,

HAGO SABER: Que el Consejo de Ministros ha acordado y yo he sancionado, lo siguiente:

POR CUANTO: Es obligacion del Gobierno y funcion propia del mismo regular las relaciones economicas entre los distintos factores de la produccion, evitando cualquier actividad que en forma directa o indirecta pueda alterar el equilibrio economico del Pais.

POR CUANTO: Es proposito del Gobierno Revolucionario garantizar, el normal funcionamiento de los centros de trabajo como medio de asegurar la produccion, necesario a la ciudadaria las fuentes de trabajo y el auge y desarrollo de la economia del Pais.

POR CUANTO: Por las anteriores consideraciones debe el Estado constribuir a la reorganizacion y administracion de la empresas que no laboran con la normalidad requerida a los efectos de lograr un mejor desenvolvimiento de las mismas, el mantenimiento de la produccion y la estabilidad y posible desarrollo del centro de trabajo.

POR CUANTO: Es funcion del Gobierno movilizar los recursos necesarios para aplicarlos en la solucion de las crisis economicas de aquellas empresaso negocios que asi lo requieran siempre que tal proteccion revierta en beneficio de la produccion y de los propios trabajadores,

POR CUANTO: Cuando el Estado realiza la aplicacion de sus fondos en beneficio de empresas privadas, debe tener una adecuada compensacion mediante el resarcimiento del capital invertido y de su interes o la

participacion en las utilidades de esas empresas en parte proporcional a la aportacion en relacion con el Capital que en total constituya el patrimonio de la misma.

POR TANTO: En uso de las facultades que le estan conferidas al Consejo de Ministros este ha acordado y yo he sancionado la siguientes:

LEY NO 647

ARTICULO PRIMERO: Se autoriza al Ministro del Trabajo para que en los casos que estime necesario disponga la intervencion de aquellas empresas o centros de trabajo en los que en forma ostensible se altere el normal desarrollo de la produccion.

ARTICULO SEGUNDO: El Ministro del Trabajo ejecitara la autorizacion a que se refiere el Articulo primero en los siguientes casos.

a) Lock-out o cierre temporal o definitivo que traiga aparejada la paralizacion del centro de trabajo.

b) Braves conflictos laborales.

c) Despidos en masa.

d) Incumplimiento de las resoluciones de los Tribunales de Justicia y los laudos o resoluciones del Ministro de Trabajo producidos con ocasion de un conflicto laboral.

ARTICULO TERCERO: El Ministro del Trabajo al disponer la intervencion de una empresa o centro de trabajo lo hara mediante resolucion fundada, en la que, conste claramente el motivo que la provoca, la duracion de la misma, el nombre del interventor designado y las facultades de que queda investido.

En la propia resolucion se senalara el sueldo que deba percibir el interventor mensualmente y durante el tiempo que ejerza sus funciones.

ARTICULO CUARTO: Las intervenciones dispuestas por el Ministro del Trabajo en virtud de lo dispuesto en la presente Ley no podran tener una duracion mayor de seis meses. No obstante, cuando para el logro de los fines de la intervencion se requiriese prorrogar dicho terminos, sera necesaria le disposicion del Presidente de la Republica que se dictara a propuesta del Ministro del Trabajo y la cual no excedera de un termino de seis meses.

ARTICULO QUINTO: Los interventors designados en virtud de los dispuesto en esta Ley tendran las facultades necesarias para administrar y dirigir la empresa o centro de trabajo comprendidos en la misma y todas aquellas que le corresponden a sus ejecutivos, quedando subrogados en el lugar y grado del patrono sin perjuicio de que en la propia resolucion porque se decreta la intervencion y se nombre el interventor, se especifique el alcance de sus funciones y facultades.

ARTICULO SEXTO: Se Prohibe el cierre temporal o definitivo de toda empresa o centro de trabajo sin la previa autorizacion del Ministro del ramo, Las personas naturales o juridicas que como duenos o titulares por cualquier concepto de una empresa o centro de trabajo estima en conveniente a sus intereses el cierre de la misma, deberan solicitar autorizacion previa del Ministro del Trabajo, el cual en el termino de treinta dias siguientes a la presentacion de la solicitud, podra acceder a lo pedido o decretar la intervencion de la empresa o centro de trabajo en la forma y condiciones que se establecen en esta Ley.

Transcurridos los treinta dias a que se refiere el parrafo precedente la responsabilidad del patrono quedara a salvo en relacion a la obligacion que por este precepto se le impone y podra proceder conforme a lo que hubiere solicitado.

ARTICULO SEPTIMO: En todos los casos en que se inicie procedimiento judicial de quiebra o suspension de pago de cualquier empresa mercantil o fabril que

constituya un centro de trabajo, el Juez de inmediato, le comunicara al Minstro del Trabajo la promocion del asunto, suspendiendo toda actuacion por termino de quince dias.

El Ministro de Trabajo dentro del termino a que se refiere el parrafo precedente podra decretar la intervencion de la industria o comercio, notificandolo de inmediato al Juzgado que conozca del asunto en cuyo caso continuara paralizado el procedimiento hasta tanto no transcurra el termino por el que se hubiera decretadola intervencion o la prorroga en su caso.

Si transcurriere el termino de quince dias sin que se hubiese decretado intervencion alguno o antes, el Ministro del Trabajo hiciera saber al Juez su intencion de no intervenir el centro laboral, continuara el procedimiento por todos los tramites establecidos por la Ley.

ARTICULO OCTAVO: En los casos en que fuere necesario para el desarrollo de la industria cualquier clase de financiamento, el interventor lo solicitara asi del Ministro del Trabajo y esta lo proporcionara si lo estimare de beneficio por medio del Banco Nacional, el Banco de Fomento Agricola e Industrial de Cuba, el Banco de Desarrollo Economico y Social, o cualquier otra institucion Estatal o Paraestatal o privada.

En los casos en que fuera posible obtener los financiamientos requeridos de los organismos a que se refiere el parrafo anterior, o la premura del caso asi lo requiriere, el Consejo de Ministros a propuesta del Ministro del Trabajo podra conceder los creditos requeridos hasta donde fuere indispensable para mantener el normal funcionamiento de la empresa o negocio.

Cuando el Estado contribuya con fondos propios segun lo dispuesto en este articulo podra optar:

a) En participar de las utilidades de la empresa en la parte correspondiente al capital aportado en relacion a capital total de aquella en la que se incluira el aporte estatal.

b) Mantenerse como acreedor privilegiado, viniendo obligado la empresa o negocio que hubiere recibido la aportacion estatal a la devolucion de la misma con cargo a sus utilidades y devengando los saldos pendientes un interes del 6% anual.

En los casos en que el Estado optare por formar parte de la empresa, sera representado en el mismo por la persona que designe el Departamento de Industrializacion del Instituto Nacional de Reforma Agraria, cuya designacion se hara conforme a las facultades que le confiere la Ley de su Institucion.

ARTICULO NOVENO: Las intervenciones que en virtud de la presente Ley disponga el Ministro del Trabajo cesaran una vez que las mismas alcancen el objeto propuesto o sea superada la crisis que la motivo en ultimo termino por vencerse el termino por que fue decretada su prorroga.

Terminada la intervencion dispuesta al amparo de esta Ley, los interventores vienen obligados a rendir cuenta detallada de sus gestiones al Ministro del Trabajo dentro del termino de quince dias a partir del siguiente en que hubiesen cesado como tales interventores cuyo termino podra prorrogarse por quince dias mas en virtud de causa justificada.

ARTICULO DECIMO: Sin perjuicio de los dispuesto en la presente Ley, las personas que dispusieren el cierre temporal o definitivo de cualquier empresa o centro de trabajo sin cumplir lo dispuesto en el articulo sexto seran sancionados con una multa de treinta y una a ciento ochenta cuotas o privacion de libertad de treinta y uno a ciento ochenta dias, o ambas sanciones siendo del conocimiento del Juez Correccional de la demarcacion en que radique el centro de Trabajo. En igual sancion incurriran los interventores que no rindan las cuentas de sus gestiones dentro del termino concedido y su prorroga en su caso.

DISPOSICION TRANSITORIA

UNICA. Los procedimientos de quiebra o de suspension de pagos que estuvieren en tramitacion a la promulgacion de la presente Ley, se suspenderan de oficio por un termino de quinces dias en el estado en que se encuentren, comunicandosele al Ministro del Trabajo a los fines dispuesto en el articulo septimo, reandandose le sustanciacion si, dentro del termino senalado no se decretase la intervencion y diese conocimiento al Juez o Tribunal de que se trate.

DISPOSIONES FINALES

PRIMERA: El Ministro del Trabajo queda encargado del cumplimiento de lo dispuesto en la presente Ley.

SEGUNDA: Se derogan cuantas disposiciones legales y reglamentarias se opongan al cumplimiento de lo dispuesto en la presente Ley que comenzara a regir desde la fecha de su publicacion en la Gaceta Oficial de la Republica.

POR TANTO: Mando que se cumula y ejecute la presente Ley en todas sus partes.

DADA en al Palicio de la Presidencia en la Habana, a 24 de Noviembre de 1959 — Ano de la Liberacion.

OSVALDO DORTICOS TORRADO
PRESIDENTE

FIDEL CASTRO RUZ
PRIMER MINISTRO

AUGUSTO R. MARTINEZ SANCHEZ
MINISTRO DEL TRABAJO

APPENDIX G

(Translation from Spanish)

Cuban Law No. 647, of November 24, 1959

LABOR.

I, OSVALDO DORTICOS TORRADO, President of the Republic of Cuba,

PROCLAIM: That the Council of Ministers has agreed on and I have sanctioned, the following:

WHEREAS: It is the obligation and the proper function of the Government to regulate the economic relations among the various factors of production, preventing any activity that could directly or indirectly affect the economic equilibrium of the country.

WHEREAS: It is the purpose of the Revolutionary Government to assure the normal functioning of the centers of labor as a means of assuring the production that is needed by the citizenry /in/ sources of labor and the increase and development of the country's economy.

WHEREAS: For the reasons stated above the State should contribute towards reorganizing and managing enterprises not operating with the normality needed to achieve better development thereof, maintaining production, and stabilizing and possibly developing the center of labor.

WHEREAS: It behooves the Government to muster the necessary resources in order to apply them to the solution of the economic crises of these firms or businesses that so require, always provided that such protection redounds to the advantage of production and the workers themselves.

WHEREAS: When the State applies its funds for the benefit of private enterprises, it should have adequate compensation in the form of the return of the

capital invested and of the interest thereon, or a share in the profits of those firms in a portion that is in proportion to the total capital constituting the property of the enterprise.

THEREFORE: By virtue of the powers granted the Council of Ministers it has agreed and I have sanctioned the following:

LAW NO. 647

ARTICLE ONE: The Minister of Labor is empowered to order intervention, in those cases where he deems it necessary, of those enterprises or centers of labor in which normal development of production is obviously being disturbed.

ARTICLE TWO: The Minister of Labor shall exercise the powers referred to in the first Article in the following cases.

a) Lockout or temporary or final closing, entailing stoppage of the center of labor.

b) Serious labor conflicts.

c) Mass dismissals.

d) Failure to comply with the decisions of the courts of Justice and the recommendations or decisions of the Minister of Labor issued in connection with a labor conflict.

ARTICLE THREE: When the Minister of Labor orders intervention of an enterprise or center of labor, he shall do so by means of a decision for cause, clearly stating the reason calling for it, its duration, the name of the interventor designated and the powers vested in him.

The decision proper shall indicate the salary the interventor shall receive monthly throughout the time he is in office.

ARTICLE FOUR: Interventions ordered by the Minister of Labor in virtue of the provisions of the present Law may not have a duration of over six months. However, when it is necessary to extend the said term in order to attain the purposes of the intervention, an order by the President of the Republic shall be required, which he shall issue at the request of the Minister of Labor and which shall not exceed the term of six months.

ARTICLE FIVE: Interventors designated pursuant to the provisions of this law shall have the powers needed to administer and direct the enterprise or center of labor covered thereby and all the powers appertaining to its executives, for whom and in whose place and stead he is substituted, provided that the resolution itself that orders the intervention and names the interventor may specify the scope of his functions and powers.

ARTICLE SIX: Temporary or definitive closing of any firm or center of work is prohibited without prior authorization by the Minister of the branch of industry. Natural or juridical persons who, as owners or proprietors of a firm or center of labor in any way, shall deem closing the same in conformity with their interests, must apply for a prior authorization from the Minister of Labor, who may, within the term of thirty days following the filing of the application, grant the request or decree intervention of the firm or center of labor, in the form and under the conditions laid down in this law.

At the end of the thirty days referred to in the preceding paragraph, the responsibility of the owner with respect to the obligation imposed on him in this connection shall cease, and he may proceed in accordance with the tenor of his application.

ARTICLE SEVEN: In all cases in which a judicial proceeding is being brought for bankruptcy or suspension of payments by any commercial or manufacturing

enterprise which is a center of labor, the Judge shall immediately notify the Minister of the action, and postpone any steps for a term of fifteen days.

Within the aforesaid term, the Minister of Labor may order intervention of the industry or business, giving notice at once to the court taking cognizance of the matter, in which case the proceedings shall continue inactive until the end of the term for which intervention, or the extension thereof, has been ordered in the case.

If the term of fifteen days shall have elapsed without any intervention having been ordered, or if before then the Minister of Labor shall have informed the Judge of his intention not to intervene in the center of labor, the proceedings shall go ahead in all the steps prescribed by law.

ARTICLE EIGHT: In cases where any kind of financing is required for the development of the industry, the interventor shall apply for the same from the Minister of Labor, who shall grant it to him if he deems it advantageous, through the National Bank, the Agricultural and Industrial Development Bank of Cuba, the Economic and Social Development Bank, or any other government, quasi-governmental or private institution.

In cases where it has not been possible to obtain the necessary financing from the agencies referred to in the preceding paragraph, or the urgency of the situation makes it necessary, the Council of Ministers may, on the motion of the Minister of Labor, grant the credits required to the extent indispensable for maintaining normal operation of the enterprise or business.

When the State contributes its own funds, pursuant to this article, it will have the option:

a) Of sharing in the profits of the enterprise in the proportion borne by the contributed capital to the total capital of the enterprise, in which the government contribution shall be included.

b) Of keeping the position of privileged creditor, the enterprise or business that has received the government contribution being under the obligation of repaying the same out of its earnings and the pending balances paying interest at 6% per annum.

In cases where the State shall elect to become a part of the enterprise, it shall be represented therein by a person to be designated by the Industrialization Department of the National Institute of Agrarian Reform, which nomination shall be made pursuant to the powers granted it by its charter.

ARTICLE NINE: Interventions ordered by the Minister of Labor in virtue of the present law shall end as soon as they achieve the goals set up, or the crisis is overcome that gave rise to them originally, or finally at expiry of the term for which their extension was set.

At the end of an intervention under this Law, the interventors are required to give a detailed account of their administration to the Minister of Labor within a term of fifteen days from the day after they have ceased to be interventors, which term may be extended for a further fifteen days, for cause.

ARTICLE TEN: Without prejudice to the provisions of the present Law, persons who order the temporary or definitive closing of any enterprise or business without complying with the provisions of Article Six shall be liable to a fine of thirty-one to one hundred eighty quotas, or imprisonment for thirty-one to one hundred eighty days, or both, under the jurisdiction of the Correctional Judge of the district in which the center of labor is located. Interventors who fail to submit an account of their administration within the term indicated, or the extension thereof, shall be liable to the same penalty.

TRANSITIONAL CLAUSE

ONE AND ONLY: Proceedings in bankruptcy or for suspension of payments that are under way at the promulgation of the present Law shall be automatically suspended for a period of fifteen days, at the point they shall have reached, the Minister of Labor being informed for the purposes stated in Article Seven, proceeding being continued if, within the term indicated, intervention has not been ordered and notice thereof given to the Judge or Court in question.

EXECUTORY CLAUSES

FIRST: The Minister of Labor is entrusted with enforcement of the provisions of the present Law.

SECOND: Any provisons of the law or regulations contrary to the provisions of the present law are hereby repealed, and the law shall be in effect from the date of its publication in the official Gazette of the Republic.

WHEREFORE: I order that the present Law be complied with and enforced in all its parts.

GIVEN in the Presidential Palace in Havana, on November 24, 1959—Year of Liberation.

OSVALDO DORTICOS TORRADO
PRESIDENT

FIDEL CASTRO RUZ
PRIME MINISTER

AUGUSTO R. MARTINEZ SANCHEZ
MINISTER OF LABOR

APPENDIX H

Cuban Law No. 843, of July 6, 1960

GACETA OFICIAL, LA HABANA,

CURSADO 6 DE JULIO DE 1960.

Ley No. 843

Modificacion de la Ley de INTERVENCION (647) de 24 de Noviembre de 1959.

OSVALDO DORTICOS TORRADO, Presidente de la Republica de Cuba.

Hago saber: Que el Consejo de Ministros ha acordado y yo ha sancionado lo Siguiente:

Por cuanto: La Ley numero 647 de 24 de Noviembre de 1959, publicada en la GACETA OFICIAL del dia 25 del propio mes, faculta al Ministro del Trabajo para que mediante el procedimiento en ella establecido y en los casos previstos en su Articulo II, proceda a la intervencion de las Empresas o Centros de Trabajo en los que en forma ostensible se altere el normal desarrollo de la produccion.

Por cuanto: Se ha observado que contra diversas empresas o centros de trabajo intervenidos, pesan distintos procedimientos judiciales, a virtud de obligaciones contraidas por las mismas con anterioridad a las Resoluciones de Intervencion; procedimientes en los que de ejecutarse las sentencias dictadas en ellos, podran hacer ineficaces las intervenciones y tracer como consecuencia el cierre de centros de trabajo.

Por cuanto: El Articulo 222 de la Ley Fundamental de la Republica establece como deber del Estado el orientar la economia nacional en beneficio del pueblo, por lo que en cumplimiento de dicho precepto, resulta procedente dictar cuantas medidas sean necesarias, tales como

la de propender al cumplimiento de los fines de las intervenciones, suspendiendo la ejecucion de las sentencias judiciales dictadas contra empresas intervenidas.

Por cuanto: En los momentos actuales muchos centros de trabajo intervenidos, estan urgidos de que se prorroguen en ellos las intervenciones decretadas por subsistir los motivos que las determinaron, lo que hace innecesario que tal prorroga se dicte en particular con relacion a cada uno de ellos, si con caracter general a ello puede procederse.

Por tanto: En uso de las facultades que le estan conferidas, el Consejo de Ministros resuelve dictar la siguiente:

Ley No. 843

Articulo 1. Se modifica el Articulo Cuarto de la Ley numero 647 de 24 de Noviembre de 1959 que quedara redactado en la forma siguiente:

Articulo Cuarto: El termino fijado para la duracion de las intervenciones dispuestas por el Ministro del Trabajo, en virtud de lo dispuesto en la presente Ley, podra ser prorrogado las veces que fuese necesario para el logro de los fines de la intervencion, mediante Resolucion del propio Ministro del Trabajo.

Articulo 2. Los tribunales no despacharan ejecucion alguna contra empresas que se encontraren intervenidas por el Estado, en tanto dure la intervencion, por obligaciones contraidas con anterioridad a la fecha en que se hubiere dispuesto la intervencion.

DISPOSICIONES TRANSITORIAS

Primera: El Ministro del Trabajo podra, mediante las correspondientes Resoluciones, prorrogar las intervenciones dispuestas al amparo de la Ley, numero 647

de 24 de Noviembre de 1959, antes de la vigencia de esta Ley, cuando fuera necesario para el logro de los fines de la intervencion. —

Segundo: Los procedimientos judiciales que se encuentren en tramites de ejecucion de sentencia a la promulgacion de esta Ley, dirigidos contra empresas que se encuentren intervenidas por el Estado, seran suspendidos en el estado en que se encuentren, en tanto dure la intervencion. —

Los procedimientos judiciales que no hubieren llegado al tramite de ejecucion, continuaran sustanciandose hasta ese momento procesal en que seran paralizados en tanto dure la intervencion.

DISPOSICION FINAL

Se derogan cuantas disposiciones legales y reglamentarias se opongan a lo dispuesto en la presente Ley, la que comenzara a regir a partir de su publicacion en la GACETA OFICIAL de la Republica.

Por tanto: Mando que se cumpla y ejecute la presente Ley en todas sus partes. —

Dada en el Palicio de la Presidencia, en La Habana, a 30 de Junio de 1960.

OSVALDO DORTICOS TORRADO.

FIDEL CASTRO RUZ,
Primer Ministro.

AUGUSTO R. MARTINEZ SANCHEZ
Ministro del Trabajo.

mr/ap.

APPENDIX I

(Translation from Spanish)

Official Gazette. Havana. Published July 6, 1960

Law No. 843

Amendment to the INTERVENTION LAW (647) of November 24, 1959.

I, OSVALDO DORTICOS TORRADO, President of the Republic of Cuba.

Proclaim: That the Council of Ministers has agreed and I have sanctioned the following:

Whereas: Law Number 647 of November 24, 1959, published in the OFFICIAL GAZETTE of the 25 day of the same month, empowers the Minister of Labor, by the procedures laid down therein and in the cases contemplated in its Article II, to proceed to intervention of Enterprises or Centers of Labor in which the normal course of production is obviously impaired.

Whereas: It has been observed that various court proceedings are pending against various intervened enterprises or centers of labor, by virtue of obligations contracted by them before the Intervention Orders; in which proceedings, if the decisions handed down therein were put into effect, the interventions might be rendered ineffectual and the closing of the centers of labor might ensue.

Whereas: Article 222 of the Constitution of the Republic states that it is the duty of the State to orient the nation's economy for the benefit of the people, wherefore, in compliance with this principle, it is fitting to order what measures may be called for, such as seeing to it that the goals of the interventions are attained, suspending execution of the court decisions ordered against intervened enterprises.

Whereas: At the present time many intervened centers of labor need to have the interventions that have been ordered extended therein, since the reasons for ordering them persist, which renders it unnecessary for such extension to be specially ordered for each of them, if a general procedure can be followed.

Therefore: By virtue of the powers vested in it, the Council of Ministers has decided to proclaim the following:

Law No. 843

Article 1.- Article Four of Law Number 647 of November 24, 1959 is amended to read as follows:

Article Four: The term set for the duration of interventions ordered by the Minister of Labor, pursuant to the provisions of the present Law, may be extended as many times as may be necessary to attain the purposes of the intervention, by a Decision of Minister of Labor.

Article 2.- The courts shall not issue any executory decree against enterprises that have been intervened by the State, so long as the intervention is in effect, for obligations contracted prior to the date on which intervention was ordered.

TRANSITIONAL CLAUSES

First: The Minister of Labor may, by appropriate Decisions, extend interventions ordered under Law No. 647 of November 24, 1959, prior to the entry into force of this Law, when so required for attaining the purposes of the intervention.

Second: Court proceedings in the course of execution at the time this Law is promulgated, and directed against enterprises which are intervened by the State, shall be interrupted at the point they have reached, so long as the intervention in in force.

Court proceedings which have not reached the stage of execution shall be continued until that phase of procedure, at which they shall be suspended, so long as the intervention is in force.

EXECUTORY CLAUSE

Any provisions of the law or regulations contrary to the provisions of the present Law are repealed, and the present law shall go into effect from the time of its publication in the OFFICIAL GAZETTE of the Republic.

Wherefore: I order that the present Law be complied with and enforced in all its parts.

Given in the Presidential Palace, in Havana, on June 30, 1960.

OSVALDO DORTICOS TORRADO

FIDEL CASTRO RUZ
Prime Minister.

AUGUSTO R. MARTINEZ SANCHEZ
Minister of Labor.

mr/ap.

APPENDIX J

Resolution No. 20260, of September 15, 1960

RESOLUCION Nro. 20260

Considering provision No. 1156/80, supported by the law 647 of November 24, 1959, in the Department of Intervention of the Ministry and;

WHEREAS: The legal representatives of the Federacion Tabacalera Nacional has been denouncing before this Ministry, the crises implanted in this sector as a consequence of the policies taken by the manufacturers of cigars, cigarettes, and tobacco warehouses, which has caused considerable deterioration in production, the displacement of a great number of laborers and grave injury to the national economy.

WHEREAS: It is evident, the egotistic attitude and frank hostility to the development of the economy of the nation, adopted by these owners in the Tobacco sector and the development of a narrow commercial policy which only seeks higher profits for their own personal gain, has extraordinarily diminished the production for internal consumption as well as that destined for exportation to the markets native to Cuba, this diminishment surpassing the 15 Million units in the first quarter of the current year, as a consequence of the excessive increase in prices.

WHEREAS: The patronizing attitude attempted against the economy of the nation and the workers has been unlimited and has manifested itself in all aspects related to production, from the sale of the raw material which should be held in deposit in order to work the different types of blends, the laxity in acquiring the corresponding types of raw material from the new crops and the total abandonment of the various departments in the factories, has brought as a consequence, considerable deterioration in the quality of the product, which has been losing not only prestige, but also a market in the customary countries.

WHEREAS: The removal of the operating capital in the industry by the owners has further contributed to the ostentatious restriction and limitations of production, carrying on their activities exclusively by means of loans, principally from the States, which indicates the attitude of the owners is consciously directed to provoke a situation of disorganization and paralyzation of the industry with the consequent injury that this represents.

WHEREAS: The cigarette enterprises as well as the rest of the Tobacco magnates have participated in the resistance to elevate the crop, to buy the raw material, and to apply their own economic recourses for the development of these activities, relying for support of this, as allies, upon the large Leaf Tobacco Warehouseman.

WHEREAS: Some of these owners have abandoned their businesses and have left the National territory, leaving numerous debts and many workers unemployed, which constitutes an addition to the employment problem, which the Revolutionary Government and particularly this Ministry must avoid.

WHEREAS: It is necessary to guarantee the supply to the customary markets of Cuba, producing the tobacco in the quality that has always been characteristic of the Habana tobaccos and because of this, it placed upon the Revolutionary Government the necessity of adopting measures for the purpose of normalizing the situation created in the National Tobacco and Cigarette Industry, insuring the stability of the workers in their jobs and the production in general, which precedes the decision to intervene in the tobacco center, those who have concurred to the deeds heretofore expressed and who are: CIGAR FACTORIES; Nigos de J. Cano Y Cia., situated in San Gabriel No. 301, Cerro; Castaneda, Montero, Fonseca, S. A., Galiano 466, Habana; Cifuentes y Cia., Industria 520, Habana; Menendez, Garcia y Cia., Ltda., Amistad 407, Habana; F. Palicio y Cia. S. A.,

Maximo Gomez 51, Habana; Romeo y Julieta Fabrica de Tobacos S. A., Padre Varela 152, Habana; Tabacalera Cubana S. A., Agramonte 108, Habana; Tabacalera Pita Honos. S. A., Estevez 67, Habana; Por Larranaga, S. A., Carlos III No. 713, Habana; Tabacalera Jose L. Piedra S. A., Avenida 57 No. 13402, Marianso; Martinez y Cia., Avenida 51 No. 13606, Marianso; Tobacalera Moya S. A., Bayamo, Oriente; Bauza y Yanes, Agramonte y Republica, Cabaiguan, Las Villas; Roy del Mundo Cigar Co., Padre Varela 852, Habana; Villasmil Santalla Cia., Republica 2118, Artemisa, P. del rio; A. Quintero y Cia. S. L., D'Clouet 16-18, Cienfuegos. — CIGARETTE FACTORIES: Hijos de Domingo Mendez, Clavel No. 13, Habana; Torres Gener Enos, S. A., Meximo Gomez 51, Habana; Calixto Lopez y Cia., Agramonte 702, Habana; Cigarres H. Upmann S. A., 20 de Mayo 520, Habana; Villasmil Santalls y Cia., S. L., Canpanario 1002; Trinidad Enos. S. A., Ranchuelo, L. V.; Tabacalero Cubana, S. A., Princess 202, Habana; Sres. Ranon Rodriguez o Hijos, S. en C., 23 No. 1255, Vedado, Habana; Cia. Immobiliaria Arreyo Arenas, Villas; Triaidad Industrial S. A., Santo Domingo No. 95, Trinidad, L. V.; Cigarrera Nacional S.A., Antonio Maceo y San Mateo, Santa Clara, L. V.; Fabries de Cigarros Camaguey S. A., Camaguey; Distribuidora Montemann S.A., 20 de Mayo 520, Habana. LEAF TOBACCO WAREHOUSES: Cuba Tobacco S. A., Figuras 109, Habana; S. Ruppin Havana Tobacco Co. Inc., Carlos III No. 612, Habana; Rothschild-Samuel-Duigman, S. A., (Havana Tobacco), Dragones 108, Habana; J. B. Diaz y Cia., Paseo de Marti 115, Habana; Leslie Pantin & Son, Escobar 451, Habana; Toranoy Cia., Estrella 157, Habana; Tabacalera Nijos de Diego Montero S. A., Figuras 182, Habana; Custe Terane y Cia., Enrique Barnet 109, Habana; Junco y Cia., Lealtad 1013, Habana; N. Duys & Co., Havana Tobacco S. A., Calle Nena 75, Habana; Garcia y Vega, Virtudes 256, Habana; Tabacalera Severiano Jorge, S. A., Amistad 360, Habana; Jose Torano Y Cia., Avenida Simon Bolivar 152, Habana; Cia. Tabacalera del Caribe S. A., Industria y Barcelona, Habana; Domingo-Mendez y Cia., Cardenas 115, Habana; Cuban Land and Leaf Tobacco

Co., Agramonte 106 y Luyano 204, Habana; Pollack y Compania S. A., San Carlos 516, Habana; Liduvino Vizcaino Valdes, Estrella 619, Habana; Menendez y Cia., S. L., 24 No. 112 entre 11 y 13, Vedado; Menendez y Cia., Amistad 405, Habana; Menendez y Cia., Salud 59, Habana; Samuel Gordon & Compania S. L., Lealtad 612, Habana; Standard Havana Tobacco Co., Antonio Maceo 164, Santa Clara, L. V.

THEREFORE: Having heard the opinion of the Central Planning Congress and using the faculties conferred upon it, by Law 647 of November 24, 1959, modified in its Article 4, by the 843 of June 30, 1960.

BE IT RESOLVED:

FIRST:—Arrange the intervention of those named above by reason of this Resolution, for the period of one year.

SECOND:—Designate interventors from this Ministry in the industries referred to as follows:

(Names of the Interventors assigned to the companies intervened — Including Tabacalera Severiano Jorge, S. A., plaintiff)

THIRD:—Substitute in position and degree, the Directors of the intended industries intervened, with the Interventors designated above, with the power to open bank accounts, open credit, accept, endorse, discount or in any other form negotiate payments, letters or any other commercial documents, solicit or obtain credit, carry on the operation of buying or selling the National or foreign currencies, take money or loans with or without guarantees, stipulate type of interests, maturity, location of payments, class of currency and all other particulars esteemed convenient. Contract when considered opportune for payments of current accounts; Attach, mortgage or in any way encumber any benefits pertaining to the enterprises; buy, exchange, sell or in any other form operate in or with shares, bonuses, or other

valuables; rent vaults, depositing in same and withdrawing its contents liberally; contract conditions of employment with the laborers and employees of these enterprises; also, subscribe collective contracts of work in their name, pay the stipulated wages of employees and laborers; represent the enterprises legally in courts and out of courts and any other facility necessary for the development of its function.

FOURTH:—Order the designated Interventors to take inventory and appraisal of the goods and furniture pertaining to the intervened enterprises.

FIFTH:—Notify all parties in the proper legal procedure.

GIVEN in Habana, MINISTRY OF WORKS, on September 15, 1960.

APPENDIX K

Hickenlooper Amendment to the Foreign Assistance Act of 1964, 22 U.S.C., § 2370(e)(2)

"(2) Notwithstanding any other provision of law, no court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) a confiscation or other taking after January 1, 1959, by an act of that state in violation of the principles of international law, including the principles of compensation and the other standards set out in this subsection: *Provided,* That this subparagraph shall not be applicable (1) in any case in which an act of a foreign state is not contrary to international law or with respect to a claim of title or other right to property acquired pursuant to an irrevocable letter of credit of not more than 180 days duration issued in good faith prior to the time of the confiscation or other taking, or (2) in any case with respect to which the President determines that application of the act of state doctrine is required in that particular case by the foreign policy interests of the United States and a suggestion to this effect is filed on his behalf in that case with the court."

APPENDIX L

Proclamation 3447

EMBARGO ON ALL TRADE WITH CUBA

By the President of the United States of America
(3 C.F.R., 1959-1963 Compilation, 157)

A Proclamation

WHEREAS the Eighth Meeting of Consultation of Ministers of Foreign Affairs, Serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, in its Final Act resolved that the present Government of Cuba is incompatible with the principles and objectives of the Inter-American system; and, in light of the subversive offensive of Sino-Soviet Communism with which the Government of Cuba is publicly aligned, urged the member states to take those steps that they may consider appropriate for their individual and collective self-defense;

WHEREAS the Congress of the United States, in section 620(a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, has authorized the President to establish and maintain an embargo upon all trade between the United States and Cuba; and

WHEREAS the United States, in accordance with its international obligations, is prepared to take all necessary actions to promote national and hemispheric security by isolating the present Government of Cuba and thereby reducing the threat posed by its alignment with the communist powers;

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, acting under the authority of section 620(a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, do

1. Hereby proclaim an embargo upon trade between the United States and Cuba in accordance with paragraphs 2 and 3 of this proclamation.

2. Hereby prohibit, effective 12:01 A.M., Eastern Standard Time, February 7, 1962, the importation into the United States of all goods of Cuban origin and all goods imported from or through Cuba; and I hereby authorize and direct the Secretary of the Treasury to carry out such prohibition, to make such exceptions thereto, by license or otherwise, as he determines to be consistent with the effective operation of the embargo hereby proclaimed, and to promulgate such rules and regulations as may be necessary to perform such functions.

3. AND FURTHER, I do hereby direct the Secretary of Commerce, under the provisions of the Export Control Act of 1949, as amended (50 U.S.C. App. 2021-2032), to continue to carry out the prohibition of all exports from the United States to Cuba, and I hereby authorize him, under that Act, to continue, make, modify or revoke exceptions from such prohibition.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this third day of February, in the year of our Lord nineteen hundred and sixty-two, and of the Independence of the United States of America the one hundred and eighty-sixth.

[SEAL] JOHN F. KENNEDY

By the President:

DEAN RUSK,
Secretary of State.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 397

STANDARD CIGAR COMPANY, a Florida corporation,
Petitioner,

vs.

TABACALERA SEVERIANO JORGE, S.A., a Cuban corporation, and SEVERIANO JORGE,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION

Thomas H. Anderson,
Sawyer & Bowen,
[illegible] Floor,
[illegible] National Bank Building,
Miami, Florida, 33131
Attorneys for Respondents.

[illegible] Printing Co., Inc., 80 Eighth Street, New York 14, N. Y. [illegible]

INDEX

Statement of the Case 2

Restatement of Facts 7

Summary of Argument 11

A. The Question As to the Situs of the Debt Owing by Standard Cigar Company 12

B. The Applicability of the Act of State Doctrine 26

1. The Conflict As to Extraterritoriality 28

2. The Conflict Regarding the Validity of the Power of Attorney 36

Conclusion 38

Certification 39

Table of Cases

Atkinson v. *Superior Court*, 310 P. 2d 145 25

Augstein v. *Banska A Hutni Akciova Spolecnost*, 124 N.Y.S. 2d 446 (1953) 22

Banco Nacional de Cuba v. *First National City Bank of N. Y.*, 270 F. Supp. 1004 (S.D. N.Y. 1967) 21

Banco Nacional de Cuba v. *Sabbatino*, 376 U.S. 398 (1964) 3, 4, 5, 32

Bank of Jasper v. *First National Bank of Rome, Ga.*, 258 U.S. 112, 42 S. Ct. Rep. 202 (1922) 24

Baumgardner v. *Southern Pac. Co.*, 177 S.W. 2d 317 (1943) 25

Bollack v. *Societe Generale Pour Favoriser, etc.*, 33 N.Y.S. 2d 986 (1942) 29

Burkhart v. *Circuit Court of Eleventh J. Circuit*, 1 So. 2d 872 (Fla. 1941) 25

Caldwell v. *Armstrong*, 342 F. 2d 485 (10 Cir. 1965) 14, 17

Chicago, R. I. & P. R. Co. v. *Sturm*, 174 U.S. 710 (1899) 24

Cleveland, etc. R. R. Co. v. *Pennsylvania*, 15 Wall. 300 (1873) 14, 18

Courtlandt Corporation v. *Whitmer*, 121 So. 2d 57 (D.C.A. 2, 1960) 24

Curry v. *McCanless*, 307 U.S. 357 (1939) 14, 19

Employers' Liability Assurance Corporation v. *Sedgwick, Collins & Co.*, 1927 A.C. 95 36

Farmers Loan and Trust Co. v. *State of Minnesota*, 280 U.S. 204 (1930) 14, 19

F. Palicio y Compania, S.A. v. *Brush*, 375 F. 2d 1011 (2 Cir. 1967), cert. den. 389 U.S. 830, aff'd per curiam 256 F. Supp. 481 (S.D. N.Y. 1966) 9, 23, 28, 29, 36, 37

Investment & Securities Co. v. *United States*, 140 F. 2d 894 (9 Cir. 1944) 14, 18

Isthmian Lines, Inc. v. *Canadian Stevedoring Company*, 216 F. Supp. 856 25

Kelly v. *Bastedo*, 220 P. 2d 1069 (Ariz. 1950) 15

Marteney v. *United States*, 245 F. 2d 135 (10 Cir. 1957) 14, 18

McGrath v. *Agency of Chartered Bank of India, etc.*, 104 F. Supp. 964 (1952) 25

Meade v. *United States*, 2 Ct. Cl. 24, aff. 9 Wall. 691 29

Menendez Rodriguez v. *Pan-American Life Insurance Co.*, 311 F. 2d 429 (5 Cir. 1962) 2-3

New England Mutual Life Insurance Company v. *Woodworth*, 111 U.S. 138 (1884) 17

Pan American Life Ins. Co. v. *Rodriguez*, 376 U.S. 779 4

Republic of Iraq v. *First National City Bank*, 353 F. 2d 47 (C.A. 2, 1965) (Cert. den. 382 U.S. 1027) 2, 11, 20, 21, 32, 33

Re Russian Bank for Foreign Trade, 1 Ch. Div. 745 (1933) 22, 34

Rodriguez v. *Pan American Life Ins. Co.*, 340 F. 2d 707 (5 Cir. 1965) 4

Rogers v. *Smith*, 185 F. Supp. 401 25

Sedgwick, Collins & Co. v. *Rossia Insurance Company of Petrograd*, 1 K.B. 1 (1926) 35

Smith v. *Ajax Pipe Line Co.*, 87 F. 2d 567 (C.A. 8, 1937) 15, 19

Standard Cigar Co. v. *Tabacalera, etc.*, 376 U.S. 780 (1964) 4, 5

Steingut v. *Guaranty Trust Co. of N. Y.*, 58 F. Supp. 623 (D.C. N.Y. 1944), aff'd 161 F. 2d 571 (2 Cir. 1947), cert. dismissed 332 U.S. 753, cert. den. 332 U.S. 807 28

United States v. *Belmont*, 301 U.S. 324 (1937) 28, 29

U. S. v. *Eiland*, 223 F. 2d 118 (4 Cir. 1955) 18

U. S. v. *El Paso Natural Gas Co.*, 376 U.S. 651 6

United States v. *Pink*, 315 U.S. 203 (1942) 28, 32

Vladikavkazsky Railway Company v. *New York Trust Co.*, 189 N.E. 456 (N.Y. 1934), 91 A.L.R. 1426 33

Weinress v. *Bland*, 71 A. 2d 59 25

Zwack v. *Kraus Bros. & Co.*, 237 F. 2d 255 ..... 23, 37

TEXTS AND STATUTES

36 C.J.S. § 204 (3), p. 644 38

70 C.J.S., p. 1312 15

50 U.S.C.A., Appendix, § 1 et seq. 25

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 397

STANDARD CIGAR COMPANY, a Florida corporation,
Petitioner,

vs.

TABACALERA SEVERIANO JORGE, S.A., a Cuban corporation, and SEVERIANO JORGE,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION

This is a petition to review a decision of the United States Court of Appeals for the Fifth Circuit, which reversed a decision of the United States District Court for the Southern District of Florida. The essential question decided by the Court of Appeals was that a so-called intervention decree issued by the revolutionary government of Cuba did not divest the lawful owner of a debt from collecting the same from the debtor, a Florida corporation having its principal place of business in Tampa, Florida.

The basic question presented to and determined by the Court of Appeals in the case sub judice was disposed of

contrary to Petitioner's contention in the case of *Republic of Iraq* v. *First National City Bank*, 353 F. 2d 47 (C.A. 2, 1965) (cert. den. 382 U.S. 1027) which is not even referred to in the petition for certiorari.

The question presented by this petition is not essentially different from that presented in the *Republic of Iraq case* in which certiorari was denied by this Court. No reason exists and none has been shown why this petition stands on any different footing.

STATEMENT OF THE CASE

This action was originally brought in 1960 by Tabacalera Severiano Jorge, S.A., a Cuban corporation wholly owned by Severiano Jorge, a naturalized[1] American citizen to recover the purchase price of leaf tobacco sold to Standard Cigar Company, a Florida corporation. The action was brought in the District Court for the Middle District of Florida. The defendant answered alleging that the action should have been brought in Cuba on the ground of forum non conveniens. Standard had then and still has no office or place of business in Cuba, nor any agent there upon whom process could be served. Notwithstanding this, Standard's motion on the ground of forum non conveniens was granted.

From this judgment an appeal was taken to the Court of Appeals. Here the correctness of the lower Court's action was tested, not only with respect to the question of forum non conveniens, but also to the question as to the applicability of the Act of State Doctrine which was raised in the defendant's answer and motion to dismiss.

At the time of the hearing in the Fifth Circuit there was pending in that Court a case entitled *Menendez Rod-*

1. Citizenship was acquired shortly after the judgment here involved was rendered.

riguez v. *Pan-American Life Insurance Co.*, 311 F. 2d 429 (5 Cir. 1962). This was an action by Cuban refugees to recover on policies issued by a Louisiana insurance company. The District Court (the same one which dismissed Tabacalera) had dismissed *Rodriguez* on the ground of forum non conveniens and the two cases were argued in the Court of Appeals at about the same time.

At that time, what is now known as *Sabbatino* (*Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964)) had been decided by the Court of Appeals (for the Second Circuit), but was pending in this Court on a petition for certiorari. In its opinion of reversal in *Rodriguez* the Court of Appeals said:

> ". . . There are also certain rather obvious factual distinctions in Banco and these cases under consideration here. But the legal principles enunciated are fully applicable. In Banco the action was brought by the Castro government's financial agent who sought to invoke Cuban decrees, found confiscatory in nature, to recover from New York's defendants. Here we have Cuban nationals as plaintiffs seeking determination of their rights under contract with citizens of this country. The corporate defendants here, in effect, invoke as a bar to this litigation the decrees of Castro which would have the effect of erasing any rights of plaintiffs to monies which might be due them under contracts with American citizens. The point of convergence of these cases is clear: Our courts are not compelled by the Act of State doctrine to give force and effect to the decrees of the Castro government in Cuba. On the merits it was determined in Banco that the subject Cuban decrees were confiscatory and their effect was nullified by the trial court, which was affirmed on appeal.
>
> It is for the District Court to determine upon development of all the facts, by summary judgment or otherwise, whether the Cuban decrees are confisca-

tory or whether the particular decrees are otherwise violative of fundamental concepts of justice and, therefore, without status, in these particular cases.

If such decrees are found wanting by these standards it follows that they will not be given force and effect in our courts."

Accordingly *Rodriguez* was reversed. Then *Tabacalera* was reversed on the authority and for the reasons given in *Rodriguez*, the Court adding that the residual questions of law not dealt with in *Rodriguez* could more properly be dealt with in the District Court on the merits.

Petitions for certiorari to this Court were filed. This Court granted the certiorari pending in *Sabbatino* and reversed the Court of Appeals' opinion. It then remanded *Rodriguez* and *Tabacalera* "for further consideration in the light of *Sabbatino*." *Pan American Life Ins. Co.* v. *Rodriguez*, 376 U.S. 779; *Standard Cigar Co.* v. *Tabacalera, etc.*, 376 U.S. 780 (1964).

Accordingly, the Court of Appeals remanded *Rodriguez* to the District Court, saying:

"While the record here is clear that this complaint cannot be dismissed upon the doctrine of forum non conveniens, this Court is unable to determine from the record before it if there are factual differences which might distinguish the instant case from the specific issues raised in Banco Nacional de Cuba v. Sabbatino, supra with respect to the Act of State doctrine. We conclude, therefore, that this case should be and is hereby remanded to the District Court to afford the parties opportunity to be heard upon development of such record as is found necessary by the District Court for its determination of the applicability of the Act of State doctrine to this complaint."

Rodriguez v. *Pan American Life Ins. Co.*, 340 F. 2d 707 (5 Cir. 1965). Then it remanded Tabacalera for the reasons given in *Rodriguez*.

Thus the scope of the inquiry on remand was to determine the limited question as to the existence of factual differences between *Sabbatino* and *Tabacalera*.

In its original answer to the complaint Standard Cigar had asserted that the account sued on had been assigned to Severiano Jorge (R. 46). Accordingly, on reversal, an amended complaint was filed, with leave of Court, and in it Jorge was made a party plaintiff (R. 67).

The amended complaint alleged that Tabacalera was organized under the laws of Cuba; that Jorge was the equitable owner of all the stock; that on April 1, 1961, the corporation had sold and assigned its interest in the claim to Jorge; that at the time of the commencement of the suit, he was a citizen of Cuba and a refugee from the revolution; that he has established his residence in Florida and intended to become a citizen thereof as soon as he had qualified.

The defendant answered, asserting inter alia that it adopted by reference the allegation in its second defense in the answer to the original complaint. This allegation consisted of charges that the matters involved in the suit were governed and controlled by the laws, resolutions, proclamations and decrees of the Republic of Cuba and was in effect an invocation of the defense of the Act of State Doctrine. This was also set up in the defendant's fourth defense, which alleged that the assignment from Tabacalera to Jorge was subsequent to the intervention or nationalization of Tabacalera, was contrary to the provisions and purposes of the intervention[2] and that the court should not undertake to determine the validity of such assignment. The original answer set up as its fourth defense, the following (R. 46):

---

2. While the assignment to Jorge was executed after the intervention, it was nevertheless supported by an agreement which was made *before* the intervention and for a consideration then passing to the corporation (S.R. 4).

> "On or about the 1st day of April, 1961, the plaintiff corporation assigned to Severiano Jorge, in writing, any right of action plaintiff had against the defendant, Standard Cigar Company."

A copy of the assignment was attached and made a part of the answer. As to this the Court of Appeals said:

> "It is of especial significance to note that in none of the subsequent pleadings has the defendant amended or modified its allegation that the plaintiff had 'assigned to Severiano Jorge, in writing, any right of action plaintiff had against the defendant, Standard Cigar Company'. In a subsequent defensive pleading, Standard contended that the assignment 'or purported assignment' was invalid because not within the power of the corporation to execute."

Thereupon several depositions were taken and affidavits filed and the plaintiff moved for summary judgment. The defendant did not move for such a judgment, although euphemistically it says that "the Petitioner asserted that it was entitled to a summary judgment." (Pet. 7). How, when or to whom it made this assertion is not revealed.

In any event, a long order was entered entitled "Findings of Fact and Conclusions of Law." (R. 162).[3] Based on this a summary judgment was entered for Standard.

On appeal the Court of Appeals reversed this judgment saying:

> "We conclude, therefore, that it was error for the trial court to dismiss the complaint by summary judgment. On the record before the trial court the appellants were entitled to have their motion for summary judgment granted. Such failure by the trial court is not, of course, appealable as such, because an order

3. It is not denied that this order was prepared by opposing counsel. Therefore, according to the statements in *U. S. v. El Paso Natural Gas Co.*, 376 U.S. 651, 656, the order is not worth the paper it is written on.

denying a motion for summary judgment is an interlocutory order in the case and not a final order. However, it appears that there is not a material issue of any relevant fact under the law of the case as we conceive it to be. Both parties have had more than ample time to develop pleadings and fact issues and it now seems appropriate to direct that judgment be entered for the appellant Jorge as assignee of Tabacalera Severiano Jorge, S.A., *a status which the defendant, by its pleadings, concedes he holds if the Act of State Doctrine does not control the case.*"[4]

RESTATEMENT OF FACTS

Severiano Jorge was engaged in the tobacco business in Havana since 1942. The business was operated under the name of Severiano Jorge y Cepero, a sole proprietorship. From the beginning, the business made a substantial profit.

In 1954, in an attempt to expand the enterprise, Jorge incorporated the company under the name of Tabacalera Severiano Jorge, S.A. He owned all of the equitable interest in the corporation stock. The corporation gave a general power of attorney to Jorge and Romano (the latter had been in the family employ for nearly 50 years), empowering the grantees to rule, administer and govern all of the estate of the corporation and to collect and receive all proceeds, amounts, terms, rents, dividends and profits of the corporation (R. 159 and S.R. 1). In effect the corporation was Jorge.

For several years prior to 1960, the corporation from time to time sold substantial quantities of tobacco to Standard Cigar Company. The sales of tobacco to Standard were on account without any specific agreement as to the time and place of payment. In accordance with the

4. Emphasis supplied unless otherwise stated.

long standing custom in the tobacco industry in Cuba, the purchase price for tobacco sold and delivered was due no later than the Monday following the buyer's acceptance. Although Jorge made certain limited exceptions to the rule, which were granted only after negotiations therefor, the accounts with Standard for the shipments of tobacco made to it in July 1960 (being the shipments which are involved in this suit), were due and payable immediately upon receipt of the tobacco by the purchasers. There was no extension agreement or understanding between the corporation and Standard that it would be allowed between 90 and 120 days after shipment within which to pay the purchase price (S.R. 3). On the contrary, with respect to tobacco shipped to Standard after January 1, 1960, Jorge had an understanding with Stanford Newman of that company that payments would be made to Jorge individually and not to the Cuban government (Jorge R. 161). On several occasions during the months of August and September, 1960, while in Tampa, Florida, Jorge demanded payment from Newman of the monies owed by Standard (S.R. 4).

During the months of June and August, 1960, Jorge personally loaned to Tabacalera approximately $675,000.00 to enable it to pay for tobacco which it had purchased. It was understood by everyone, including Miguel, the President of Tabacalera, that Jorge would be repaid for these advances out of the proceeds from the resale of the tobacco to corporations in the United States, including Standard Cigar Company (S.R. 4).

The loan was used to meet payrolls and pay for tobacco sold to different customers in the States, including Standard Cigar Company (Romano's Dep. p. 12)

On September 15, 1960, Miguel informed Jorge who was in the States that the tobacco business had been inter-

vened, and Jorge did not thereafter return to Cuba (S.R. 4).[5]

On or about April 1, 1961, Romano, as Vice-President and Attorney-in-Fact for the corporation, in consideration of the loan of $675,000.00 executed an assignment to Jorge of the account owing by Standard and vested in Jorge the authority to sue for such sums (S.R. 4).

On p. 15 of its petition, as a part of the statement of the case, the Petitioner injects an argument respecting the character of the act under which the interventor allegedly took possession of the assets of Tabacalera. Here the Petitioner says that although the intervention procedure does not appear to effectuate a formal transfer of title from Tabacalera to the Cuban Government "the end result is indistinguishable in practical result from complete confiscation and nationalization." Cited in support of this position is a case entitled *F. Palicio y Compania, S.A.* v. *Brush*, 256 F. Supp. 483, 484, which will be referred to hereinafter. However, and regardless of the holding of the Court in that case, the uncontradicted testimony of the expert witnesses in the case sub judice was to the effect that the decree of intervention did not divest the stockholders of their interest in assets of the corporation and particularly did not divest Mr. Jorge of his interest acquired

5. The Court found that at this time Jorge had fled to Florida, leaving Tabacalera heavily indebted (R. 170) and that Florida and the United States had no contacts with transactions relevant hereto (R. 179). Yet in August, 1960, Jorge, while in the United States, had secured orders for approximately $1,000,000.00 worth of tobacco and had telephoned Miguel in Havana, telling him to arrange for shipment (S.R. 4). Miguel tried to make it appear that Tabacalera was insolvent but this was expressly refuted by Jorge who asserted that if Tabacalera's financial position had become impaired it was due to the acts of the interventor (R. 5). As of August 30, 1966 (1960) the corporation's total liabilities were $1,407,176.86 and its accounts receivable alone exceeded $1,230,614.13. The inventory processed and ready for shipment had a value in excess of $1,000,000.00 (id.).

under the power of attorney which was given to him by the corporation as above stated and which authorized him to collect and receive all proceeds, amounts, terms, rents, dividends and profits of the corporation including those then due or to become due in the future.

The testimony on this point was supplied by Dr. Eduardo LeRiverend, who was on the faculty of law of the University of Havana for 20 years and a Justice of the Supreme Court of Cuba (Dep. 4, 11). In this Dr. LeRiverend was also supported by Dr. Luis J. Botifoll, who practiced law in Cuba for 30 years and was General Counsel for the Commerce Department, a Doctor of Civil Law, a Doctor of Public Law and a graduate of Tulane University with a degree of LL.B.[6] (Dep. 4).

The existence and efffect of this power of attorney, together with the testimony of the Cuban lawyers was noted by the Court of Appeals in its opinion in which it said:

> "The only proof of the Cuban law that was before the trial court was in the deposition testimony of three Cuban lawyers, by whom it was made clear that the broad power of attorney executed by the corporation

---

6. "* * * In your opinion, did the resolution of the Decree of Intervention have the effect in law of displacing Mr. Jorge in the exercise of the powers attempted to be conferred upon him by that power of attorney?

A. No, for two reasons. First, because the intervention when they took only the management of the company, which is the only thing they took—took the possession of the management of the company, the man who runs the company. Now, in order to cancel a power of attorney of this type given by the stockholders of the corporation should be a resolution of the stockholders of the corporation to cancel the power of attorney. Point number one. And point number two, according to the Cuban law once a power of attorney is given the only way that you can revoke that power of attorney is going through certain formalities by which the person who has the authority to cancel has to go to a public notary, cancel the power of attorney before the notary, and notify the party who has the power. Unless you comply with that, the power is not cancelled."

in favor of Jorge and Romano could be revoked only by a similar document filed in the same registry in which the power of attorney had been filed. Even though we were to assume, contrary to the available evidence, that the power of attorney could be revoked in Cuba by a less formal act, there is an utter lack of proof that the interventor attempted to withdraw or revoke the power of attorney, probably since he knew nothing about it. The burden of proving such a revocation was, as a matter of defense, on the defendant below."

With this amplification of the facts we proceed to a discussion of Petitioner's argument.

SUMMARY OF ARGUMENT

I. The subject matter of the suit is a debt owed by a Florida corporation, which is collectible only at the domicile of the debtor and its situs was in Tampa, Florida. The debtor was not amenable to process in Cuba and was not subject to the operation of an alleged confiscatory decree passed by the Cuban government.

II. Cases dealing with the situs of debts for taxation purposes are inapposite. They constitute a class of cases which are sui generis and which have no application of the facts to the case at bar.

III. There is no conflict between the case sub judice and applicable decisions of other Courts of Appeal within the scope of Supreme Court Rule 19 s/d 1(b). The case most nearly in point to the case at bar is *Republic of Iraq* v. *First National City Bank*, 353 F. 2d 47 (C.A. 2, 1965) (Cert. den. 382 U.S. 1027), which involved the same principles and substantially the same factual situation.

IV. The Act of State Doctrine which Petitioner says is applicable here has, in fact, no application for the

reason as held in the Court of Appeals below that this Doctrine is inapplicable where the subject matter of the suit is intangible property located in the forum and subject to enforcement there.

V. The Respondents' title to the debt sought to be collected here is based in part upon a confirming assignment executed pursuant to a power of attorney given to the individual Respondent who was in fact the owner of the corporation. The facts before the District Court plainly substantiated the Respondents' claim based upon this power of attorney. The testimony demonstrated that the power of attorney was not affected by the subsequently enacted decree of intervention. There is no case in point cited by Petitioner dealing with a comparable situation.

Petitioner assaults the decision of the Court of Appeals on the ground that it is in conflict with decisions of other courts of appeal and is a decision on a Federal question and in a way in conflict with applicable decisions of this Court or is a decision of an important question of Federal law which has not been but should be settled by this Court in two respects: A) with regard to the situs of the debt sued on and B) with regard to the applicability of the Act of State Doctrine.

A. The Question As to the Situs of the Debt Owing by Standard Cigar Company.

Petitioner makes several statements regarding the assumed factual situation (Pet. 18) none of which are supported by the record in the District Court. It says that the account receivable involved herein arose out of contracts which were made and performed or to be performed in Cuba; that the tobacco which was the subject of the contract was delivered to and accepted by the Petitioner in Cuba[7] and that pursuant to the agreement of

7. Petitioner had no office or agents in Cuba so it is hard to see how it could have accepted the tobacco in Cuba.

the parties and the applicable Cuban monetary and currency control laws the sale and purchase price was to be paid by Standard to Tabacalera in Cuba. Petitioner further says that the United States had no contacts with the transaction unless the fact that Petitioner was a Florida corporation with its principal place of business in Tampa is so considered and that insofar as the transaction was concerned nothing occurred or was to occur in the United States.

Petitioner adds that the foregoing facts were and are undisputed and it was upon the basis of such facts that the situs of the account must be determined.

No record references are given to these statements. That they are not true is shown by the affidavit of Mr. Jorge.

Jorge's affidavit, which was not denied (S.R. 3) stated that on several occasions during the months of August and September, 1960 (the intervention took place on September 15, 1960), while in Tampa, Florida, he demanded payment from one Stanford Newman with the Standard Cigar Company (and one Karl Cuesta with the Antonio Company) of the amounts due for the shipments sued on. Also in his affidavit filed in the cause (R. 161) Mr. Jorge said that the shipments of tobacco made by Tabacalera from January 1, 1960 to September 15, 1960, were shipped from Cuba to consignees in the United States for the account of Continental Tobacco, Limited, except the shipment involved in this case and a companion suit, which were sold and delivered directly to Standard Cigar Company and the Antonio Company by the plaintiff to such consignees. He stated that the reason for the transaction being handled in such manner was that the individual plaintiff (Mr. Jorge) had an understanding with

Stanford Newman of Standard Cigar Company and Karl Cuesta of the Antonio Company that shipments for tobacco sold and delivered to such companies would be made to Jorge individually and not to the Cuban government (R. 162). This agreement was obviously made by the parties in anticipation of some possible act on the part of the Cuban government.

So, since the situs of the debt sued on depends on the facts then there is no question but that this was in Tampa, Florida, where the demand was made and where Jorge then was.

Nevertheless, the Petitioner says that the Court of Appeals erroneously held that the situs of the debt sued on was in Tampa, Florida, and says that this holding is in conflict with applicable decisions of this Court and Federal Courts of Appeal. The cases out of which this conflict is said to arise are:

Caldwell v. *Armstrong*, 342 F. 2d 485 (10 Cir. 1965).

Marteney v. *United States*, 245 F. 2d 139 (10 Cir. 1957).

Investment & Securities Co. v. *United States*, 140 F. 2d 894 (9 Cir. 1944).

Cleveland, etc. R. R. Co. v. *Pennsylvania*, 15 Wall. 300, 320 (1873).

Farmers Loan and Trust Co. v. *State of Minnesota*, 280 U.S. 204 (1930).

Curry v. *McCanless*, 307 U.S. 357 (1939).

Before proceeding to a discussion of these cases it should first be pointed out that, in practice, situs is not an inflexible, categorical concept, but is rather a factor, the determination of which depends upon the particular problem and the public policy involved therein. That the

Court of Appeals recognized the true nature of the concept is evident from its succinct review of the law with regard to the situs of intangible property, to-wit:

> "The situs of intangible property is about as intangible a concept as is known to the law. The suits may be in one place for ad valorem tax purposes, *Farmers Loan and Trust Co.* v. *State of Minnesota,* 280 U.S. 204; it may be in another place for venue purposes, i.e., garnishment, *Chicago R. I. & P. R. Co.* v. *Sturm,* 174 U.S. 710; it may be in more than one place for tax purposes in certain circumstances, *Curry* v. *McCanless,* 307 U.S. 357; it may be in still a different place when the need for establishing its true situs is to determine whether an over-riding national concern, like the application of the Act of State Doctrine is involved."

This holding is in accord with *Smith* v. *Ajax Pipe Line Co.,* 87 F. 2d 567 (C.A. 8, 1937), in which the Court held that the rule with respect to situs is a court made rule designed to work out practical justice, saying:

> "Being such, it is pushed no further than the reason for its existence justifies and where justice requires a departure therefrom exceptions are made, both in other fields of law and in taxation."

The word "situs" is defined as meaning site, the place where a thing is. In its natural signification, it is applicable only to landed estates since, strictly speaking, personal property cannot be said to have a situs. Situs with respect to intangibles now signifies power or jurisdiction over such intangibles rather than its old connotation of location (70 C.J.S., p. 1312). This is clearly expressed in *Kelly* v. *Bastedo,* 220 P. 2d 1069, 1072-73 (Ariz. 1950), wherein the Court in considering the situs of corporate stock for the purpose of levying an estate tax said:

"Appellees reason that stocks and secured promissory notes of a domestic corporation, being intangibles, are not property 'situated in this state,' but have their situs only at the domicile of the owner. Appellees arrive at such a conclusion by relying on the maxim of mobilia sequentur personam to determine the situs of intangibles for purposes of taxation. The basis for this reasoning is the feeling that intangibles must be treated in the same manner as tangibles, that is, at one time they may have a situs or location only at one place. This is fallacious because it ignores the fact that tangibles have a physical location whereas intangibles and choses in action exist only in contemplation of law, therefore, giving them a situs is a mere fiction.

The early cases adopted the fiction of situs or location of intangibles for use in determining conflict of laws problems. This concept of situs was then applied to problems of taxation so that in order to justify taxation, the property, tangible or otherwise, had to have a situs in the taxing jurisdiction. The decision of the United States Supreme Court in the case of *Curry* v. *McCanless*, 1939, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162, returned to the *Blackstone* v. *Miller*, 1903, 188 U.S. 189, 23 S. Ct. 277, 47 L. Ed. 439, doctrine that intangibles may have a taxable situs in more than one state. With the decision in the case of *State Tax Commission of Utah* v. *Aldrich*, 316 U.S. 174, 62 S. Ct. 1008, 86 L. Ed. 1358, 139 A.L.R. 1436, extending the implication and scope of *Curry* v. *McCanless*, supra, it became obvious that the United States Supreme Court began taking the more realistic view in respect to intangibles in that the right of states to tax depends not on the fictional theory of situs but on the fact that the intangibles are within the power and receive the protection of the taxing state."

In an effort to support conflict certiorari, the Petitioner has cited a number of mechanical and irrelevant

cases concerning the taxation of intangible property, cases involving the statutory requirements for priority with respect to federal income tax liens and a special situation involving support of former wife by divorced husband.

Petitioner avoids any reference to the cases dealing with the question of the situs of intangible personal property in the application of the Act of State Doctrine, and for good reason since without exception, all of the cases involving analogous factual situations hold that property such as we have here has its situs within the United States and that the Act of State Doctrine is not applicable.

In *Caldwell v. Armstrong, supra*, the Wyoming State Court granted a wife domiciled and divorced there a lien for delinquent support payments upon a matured life insurance policy issued by a Massachusetts company on her former husband who was also domiciled in Wyoming. This case is hardly support for the Petitioner's position and simply goes to show that situs concept is variable and elastic. Long ago, in *New England Mutual Life Insurance Company* v. *Woodworth*, 111 U.S. 138 (1884), it was held that an insurance policy issued by a company incorporated in another state payable to the insured was an asset for the purpose of founding administration upon her assets in another state in which the corporation had done business. In that decision letters of administration were granted in Illinois to surviving husband domiciled in Illinois, where the only asset in Illinois was an insurance policy on the life of the deceased wife, who died a resident of New York. The basis of the decision was that the obligation of the policy had a situs in Illinois. In the course of its opinion the Court said:

"The general rule is that simple contract debts, such as a policy of insurance not under seal, are, for the purpose of founding administration, assets where the debtor resides, without regard to the place where the policy is found, . . ."

Both *Marteney* v. *United States*, 245 F. 2d 135 (C.A. 10, 1957) and *Investment & Securities Co.* v. *United States*, 140 F. 2d 894 (C.A. 9, 1944), involved the question of perfecting Federal income tax liens under a Federal Statute providing that the liens would not become effective against mortgagees, pledgees, purchasers, or judgment creditors until notice thereof was filed in accordance with the law of the state in which the property subject to the lien was situated or was filed in the office of the Clerk of the United States District Court in the District where the property was located, if no state law was applicable.

A discussion as to the operation of the taxing statutes is to be found in *U. S.* v. *Eiland*, 223 F. 2d 118, 122 (4 Cir. 1955). Here the Court said that only tangible property can be said to be situated in a county and that with respect to intangible property entirely different provisions are needed and have been made by the taxing statutes.

In *The Cleveland etc. Railroad Co.* v. *Pennsylvania*, *supra*, cited and emphasized for what the Petitioner would have the Court believe to be a rigid rule of situs with respect to corporations, the Supreme Court was faced with the problem of the possibility of double taxation upon corporate assets. Here the State of Pennsylvania had attempted to tax bonds held by out-of-state bondholders and thus was acting beyond its jurisdiction. The Court feared the possibility of double taxation as the assets could likewise be taxed by the state in which they were located. The Court, therefore, adopted the practi-

cal solution of determining the situs for tax purposes to be at the state of the holder of the obligation.

Farmers Loan and Trust Co. v. State of Minnesota, supra, holds that the situs of bonds for taxation purposes is at the debtor's domicile. However, the Court cited a number of its earlier decisions which recognized the principle that choses in action might acquire a situs for taxation at places other than the place of domicile if they had become integral parts of some local business.

The rule in *Ajax Pipe Line, supra,* was echoed here by a statement in the course of the opinion that "taxation is an intensely practical matter, and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences."

Curry v. McCanless, supra, which was also a tax case was a little more complicated than *Farmers Loan and Trust Co.* The fluidity of the situs concept was additionally demonstrated by the fact that in *McCanless* both Alabama and Tennessee were held to have the right to tax certain intangibles, the Court saying:

> ". . . On the contrary, this Court, in sustaining the tax at the place of domicile in a case like the present, has declared that both the decedent's domicile and that of the trustee are free to tax. Bullen v. Wisconsin, supra, 240 U.S. 631, 36 S. Ct. 474, 60 L. Ed. 830; cf, Keeney v. Comptroller of New York, 222 U.S. 525, 537, 32 S. Ct. 105, 108, 56 L. Ed. 299, 38 L.R.A., N.S., 1139; Guaranty Trust Co. v. Blodgett, 287 U.S. 509, 53 S. Ct. 244, 77 L. Ed. 463. That has remained the law of this Court until the present moment, and we see no reason for discarding it now. We find it impossible to say that taxation of intangibles can be reduced in every case to the mere mechanical operation of locating at a single place, and there taxing, every legal interest growing out of all the complex

legal relationships which may be entered into between persons. This is the case because in point of actuality those interests may be too diverse in their relationships to various taxing jurisdictions to admit of unitary treatment without discarding modes of taxation long accepted and applied before the Fourteenth Amendment was adopted, and still recognized by this Court as valid. . ."

This disposes of Petitioner's "authorities".

On the other hand the numerous and varied cases from this and other Federal and State courts which have discussed the situs of intangibles plainly support the decision of the case sub judice.

First in order of importance, because it has been before this Court, is *Republic of Iraq* v. *First National City Bank,* 353 F. 2d 47 (C.A. 2, 1965) (cert. den. 382 U.S. 1027). In this case the Iraqi government sued the First National Bank to recover a deposit which had been made there by King Faisal and also to recover 4008 shares of Canada General Fund on deposit in custody accounts with the Irving Trust Co. of New York. The First National Bank had been appointed Administrator of the King's New York assets by the Surrogate's Court of that state.

By ordinance of the revolutionary government of Iraq, which recited that the former dynasty had exerted its influence to gain illegal wealth, the government decreed that all property of the dynasty movable or immovable should be confiscated.

In brushing aside the contention that the Act of State Doctrine was applicable and in holding that the assets did not belong to the Iraq government, the Court of Appeals said:

"In this case, neither the bank account nor the shares in the Canadian investment trust can realisti-

> cally be considered as being within Iraq simply because King Faisal resided and was physically present there at the time of his death; in the absence of any showing that Irving Trust had an office in Iraq or would be in any way answerable to its courts, we need not consider whether the conclusion would differ if it did. Cf. United States v. First Nat'l City Bank, 379 U.S. 378, 85 S. Ct. 528, 13 L. Ed. 2d 365 (1965). So far as appears on this record, only a court in the United States could compel the bank to pay the balance in the account or to deliver the certificates it held in custody. The property here at issue thus was within the United States. Although the nationality of King Faisal provided a jurisdictional basis for the Republic of Iraq to prescribe a rule relating to his property outside of Iraq, Restatement § 30 (1) (b), this simply gives the confiscation decree a claim to consideration by the forum which, in the absence of such jurisdiction, it would not possess—not a basis for insisting on the absolute respect which, subject to the qualifications of Sabbatino, 376 U.S. at 428, 84 S. Ct. 923, the decree would enjoy as to property within Iraq at the time."

In *Banco Nacional de Cuba* v. *First National City Bank of N. Y.*, 270 F. Supp. 1004 (S.D. N.Y. 1967), the Court applied the holding in *Republic of Iraq* to a similar situation. Here a number of Cuban banks, which were nationalized pursuant to Law No. 891 in October, 1960, had maintained accounts with the defendant in New York City. *Banco Nacional* as agent of the Cuban Government claimed these funds by virtue of the confiscation decree declaring it to have full title to the property of the Cuban banks who maintained these accounts in New York.

In rejecting this contention and ruling against the Cuban government, the Court went to the crux of the matter immediately, saying:

> "The short answer to this claim is simply that 'when property confiscated is within the United States at the time of the attempted confiscation, our courts will give effect to acts of state "only if they are consistent with the policy and law of the United States."' Republic of Iraq v. First National City Bank, 353 F. 2d 47, 51 (2d Cir. 1965), cert. den., 382 U.S. 1027, 86 S. Ct. 648, 15 L. Ed. 2d 540 (1966), quoting ALI, Restatement of Foreign Relations Law § 46 (Proposed Official Draft, 1962). The Cuban decree, like the attempted confiscation of the accounts in *Republic of Iraq*, is plainly contrary to our policy and laws. It is not entitled to extraterritorial enforcement in United States courts as to property located within the United States. Republic of Iraq v. First National City Bank, supra; see F. Palicio y Compania v. Brush, 256 F. Supp. 481 (S.D. N.Y. 1966), aff'd per curiam, 375 F. 2d 1011 (2nd Cir. 1967); see Note, International Conflict of Laws: Limitations Imposed On Effect American Courts May Give Foreign Confiscations, 1966 Duke L.J. 828."

In *Re Russian Bank for Foreign Trade*, 1 Ch. Div. 745, 767 (1933), the Court held that where a debt owed by a nationalized Russian corporation was "locally situated" or "primarily recoverable" in England, it was not affected by Soviet nationalization decrees even though it was due to a person who was a Russian subject at the date of the decree. In so holding the Court said:

> "If the debt was primarily recoverable in London, I am of opinion that it was not affected by the Soviet legislation, even though it was due to a person who was a Russian subject at the date of the nationalization decrees. Its locality must be taken to be the place where the debt was in the ordinary course recoverable:"

In *Augstein* v. *Banska A Hutni Akciova Spolecnost*, 124 N.Y.S. 2d 446 (1953), a Czechoslovakian corporation

ostensibly owned property in New York, which was allegedly purchased with funds on deposit in a New York Bank. The complaining stockholder, a Jewish refugee, who fled for his life when Hitler invaded Czechoslovakia, was outlawed by the communist dominated regime which charged him with misconduct so as to deprive him of his property.

The New York Court held that it had jurisdiction over the defendant corporation and that the stockholder had a right to pursue the diversion of funds which had made his stock worthless. The Court said that the assets of the defendant Banska had been "nationalized" but that the Courts of New York denied validity to such nationalization decrees as to assets within the state.

F. Palicio y Compania, S.A. v. *Brush,* 256 F. Supp. 481, 492 (D.C. N.Y. 1966), cited and relied upon by the Petitioner, except as to matters relating to situs, was a suit brought in the name of five intervened Cuban businesses. The dispute involved the rights of the interventors who took possession of the businesses intervened and assets of certain manufacturers on behalf of the Cuban government and the dispossessed former owners to pursue in the District Court suits for the purchase price of Cuban cigars sold and delivered to U. S. importers by the interventors and for trade-mark infringement. The disposition of the case with respect to the cigars is discussed hereinafter. With respect to the rights in the trade-mark, the Court said that the effect of the confiscatory interventions could best be evaluated by determining whether recognition of a transfer of title to U. S. trade-marks would give an impermissible extraterritorial effect to the taking.

The Court said that the interventors were not entitled to enforce in our Courts claims arising out of property

rights represented by trade-marks registered with the United States Patent Office.

In the course of its opinion the Court quoted from *Zwack* v. *Kraus Bros. & Co.*, 237 F. 2d 255, as follows:

> "where firm assets existing in the forum are concerned, technical considerations as to the manner in which the foreign state seeks to expropriate them are not controlling. * * *. It is clear that the (foreign) government could not directly seize the assets which have a situs in the state of the forum. To allow it to do so indirectly through confiscation of firm ownership would be to give its decree extraterritorial effect and thereby emasculate the public policy of the forum against confiscation."

In *Bank of Jasper* v. *First National Bank of Rome, Ga.*, 258 U.S. 112, 42 S. Ct. Rep. 202 (1922), this Court (per Brandies, J.) held that an open account owed by a resident debtor to a non-resident creditor was property of the creditor situated within the state over which the State courts can acquire jurisdiction.

In *Chicago, R. I. & P. R. Co.* v. *Sturm*, 174 U.S. 710 (1899), this Court held regarding the maintenance of a foreign attachment, that the situs of a debt was wherever the debtor can be found saying:

> *". . . To do it you must go to the domicile of his debtor, and can only do it under the laws and procedure in force there.*[8] *This is a legal necessity, and consideration of situs are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. He and he only has something in his hands.*

8. The Florida Court echoed the same sentiment in *Courtlandt Corporation* v. *Whitmer*, 121 So. 2d 57, 59 (D.C.A. 2, 1960), when it said: "It seems unrealistic to say that a cause of action 'arises' at a place where the action cannot be maintained."

That something is the res, and gives character to the action, as one in the nature of a proceeding in rem. . . ."

In *McGrath* v. *Agency of Chartered Bank of India, etc.*, 104 F. Supp. 964 (1952), the District Court held that the credit on the defendant's books sought to be reached was a debt to German Nationals representing property within the United States and therefore subject to vesting. The defendant, after acknowledging that for purpose of the Trading with the Enemy Act, 50 U.S.C.A., Appendix, § 1 et seq., a debt is property which may be seized by the appropriate federal authority, asserted that the debt, having been collected in the Philippines and payable in Hamburg, is not property within the United States subject to seizure. In reply thereto, the Court stated:

> "In support of the proposition that there is no property within the United States, defendant argues that the debt was payable in Germany. *But the place of payment is not the criterion of a debt's situs.* Chicago, Rock Island & Pacific Railway Co. v. Sturm, 1899, 174 U.S. 710, 19 S. Ct. 797, 43 L. Ed. 1144. What does control the power to enforce payment of a debt is the court's power over the person of the debtor. Blackstone v. Miller, 1903, 188 U.S. 189 at pages 205-206, 23 S. Ct. 277, at page 278, 47 L. Ed. 439, per Mr. Justice Holmes: . . ."

See also *Baumgardner* v. *Southern Pac. Co.*, 177 S.W. 2d 317 (1943); *Isthmian Lines, Inc.* v. *Canadian Stevedoring Company*, 216 F. Supp. 856; *Weinress* v. *Bland*, 71 A. 2d 59; *Burkhart* v. *Circuit Court of Eleventh J. Circuit*, 1 So. 2d 872 (Fla. 1941); *Atkinson* v. *Superior Court*, 310 P. 2d 145; *Rogers* v. *Smith*, 185 F. Supp. 401.

This last case contains some significantly sensible observations. For example:

> "* * * An intangible obligation to pay, whether or not evidenced by a bond or negotiable instrument, has no

'situs' in the sense of location in space. See First National Bank of Boston v. Maine, 284 U.S. 312, 328, 332, 52 S. Ct. 174, 76 L. Ed. 313; Powell, The Business Situs of Credits, 28 W.Va.L.Q. 89. What matters for purposes of 'jurisdiction' is that the obligor is here and can be made to pay. Standard Oil Co. v. New Jersey, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078; Curry v. McCanless, 307 U.S. 357, 365-367, 59 S. Ct. 900, 83 L. Ed. 1339; State Tax Comm. v. Aldrich, 316 U.S. 174, 62 S. Ct. 1008, 86 L. Ed. 1358 (overruling First National Bank of Boston v. Maine, supra, on other grounds). In a real sense, there is property here which can be effectively dealt with when an obligor is here. Harris v. Balk, 198 U.S. 215, 222-223, 25 S. Ct. 625, 49 L. Ed. 1023; Chicago, Rock Island etc. Ry. v. Sturm, 174 U.S. 710, 715-716, 19 S. Ct. 797, 43 L. Ed. 1144. Cf. Canada Southern Ry. v. Gebhard, 109 U.S. 527, 3 S. Ct. 363, 27 L. Ed. 1020. The bond itself would be substantially worthless if the United States would not enforce its recognition by the obligor, and the same holds true of a coupon detached therefrom."

These cases, some of which deal with the precise question here presented, clearly refute Petitioner's statement that the decision of the Court below was in conflict with other applicable Federal cases. That just simply is not so.

B. The Applicability of the Act of State Doctrine.

Petitioner says (p. 26):

"In its opinion, the court of appeals correctly stated the act of state doctrine as announced in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964), but erroneously, petitioner submits, decided that such doctrine is not applicable in this action."

On the question of the applicability of this doctrine, the Court of Appeals said:

"In the reconsideration we are required to make of the present case by the Supreme Court's mandate, we look first to see to what extent the facts are similar. Two points of dissimilarity are immediately apparent. The first need not be fully developed because it may really be a distinction without a difference if all of the facts were fully known, and because appellants need not rely upon this circumstance as a basis for the relief they seek here. This difference is that in the *Sabbatino* case the act of the Cuban government was a direct and open confiscation of the property of the Cuban-based sugar corporation, whereas in the instant case, the act of the Cuban government amounted only to 'in intervention' for the period of one year.[3]

The really important point of difference between the facts of this case and that of *Sabbatino* is that the subject of the confiscation in the latter case was a ship's cargo of sugar which was present in the territorial waters of Cuba—tangible personal property—whereas in the case before us the subject of the alleged 'taking' by the government of Cuba is a credit owed to the Cuban corporation (albeit arising out of a Cuban transaction), by an American creditor domiciled in Tampa, Florida."

---

3. "It is argued in the *brief* of the appellee that somehow after the end of the year the Cuban government acquired some additional absolute powers or rights as to the assets of Tabacalera, amounting in effect to confiscation. The record is void of any proof of what actually was the status of affairs, although we may feel fairly certain that the Cuban government has not affirmatively relinquished whatever rights it had to supplant the original directors and stockholders and officers of this corporation."

Petitioner argues that this holding is contrary to the decisions of this Court in two respects:

1. A conflict as to extraterritoriality between Tabacalera and *United States* v. *Belmont*, 301 U.S. 324 (1937); *United States* v. *Pink*, 315 U.S. 203 (1942); *Steingut* v. *Guaranty Trust Co. of N. Y.*, 58 F. Supp. 623 (D.C. N.Y. 1944), aff'd 161 F. 2d 571 (2 Cir. 1947), cert. dismissed 332 U.S. 753, cert. den. 332 U.S. 807.

2. A conflict regarding the validity of a power of attorney between Tabacalera and *F. Palicio y Compania, S.A.* v. *Brush*, 375 F. 2d 1011 (2 Cir. 1967), cert. den. 389 U.S. 830, aff'd per curiam 256 F. Supp. 481 (S.D. N.Y. 1966).

1. The Conflict As to Extraterritoriality.[9]

There is no conflict, real or apparent, between the decision below and any of the cited cases as a consideration will show.

In *United States* v. *Belmont, supra*, the Government brought suit as assignee of the Soviet Government of Russia, under what is known as the Litvinov Agreement, to recover from a banker in the United States moneys deposited with him by a Russian corporation. The assets of this company had been nationalized and appropriated by the Soviet Government and had been assigned to the United States as part of a plan to bring about a settlement of the mutual claims of the two governments.

The case furnishes no basis for the lower Court's judgment.

Both Russia and the United States were dealing with each other on levels far above the position occupied by Standard Cigar Co. That corporation is simply trying—

9. This point is discussed. See pp. 26-27.

and so far with success—to keep the tobacco and the money. In *Belmont* the high contracting parties were settling mutual claims which probably resulted in benefit to United States Nationals (Tex. 326). Even in the absence of this factor, the United States probably had the right as against non-resident aliens to seize their assets to satisfy its own nationals' claims. Cf. *Meade* v. *United States*, 2 Ct. Cl. 24, aff. 9 Wall. 691.

The same comment applies to *Pink* and these cases, including *Steingut*, directly support the conclusion of the Court of Appeals below.

The confiscatory decrees of the Soviet government were not given effect because of the Act of State Doctrine. They were decided on the basis that the Litvinov Agreement as a conscious act of foreign policy of the United States was valid and it is absolutely clear that if it had not been for the Litvinov Agreement effect would not have been given to the Russian decrees.

This is not only a matter of general knowledge, but it has been judicially recognized. In *Bollack* v. *Societe Generale Pour Favoriser, etc.*, 33 N.Y.S. 2d 986 (1942):

> "* * * The effect of these decisions is that the Litvinov assignment and the title acquired thereunder must be given effect regardless of any local public policy to the contrary. This result was reached by the Supreme Court of the United States upon the ground that this agreement was an integral part of the adjustment of our foreign relations with Russia and that the exercise of this power by the Executive Department of the United States Government was superior to any other consideration."

F. Palicio y Compania, S.A. v. *Brush, supra*, certainly is a broken reed as far as Standard is concerned. The suit was brought on behalf of five intervened Cuban

tobacco manufacturers acting for the Cuban government to recover the purchase price of cigars manufactured and sold both before and after the intervention. In holding that the plaintiffs were entitled to recover for the cigars *sold* after the intervention the Court said:

> "It does not necessarily follow, however, that the act of state doctrine is dispositive of this case. For 'when property confiscated is within the United States at the time of the attempted confiscation, our courts will give effect to acts of state "only if they are consistent with the policy and law of the United States."' Republic of Iraq v. First Nat'l City Bank, 353 F. 2d 47, 51 (2 Cir. 1965), quoting Restatement, Foreign Relations Law of the United States 46 (P.O.D. 1962). In the language of the cases our courts will not give 'extraterritorial effect' to a confiscatory decree of a foreign state, even where directed against its own nationals. E.g., Zwack v. Kraus Bros. & Co., 93 F. Supp. 963, 966 (S.D. N.Y. 1954), aff'd, 237 F. 2d 255, 259 (2 Cir. 1956); Blanco v. Pan-American Life Ins. Co., 221 F. Supp. 219, 227 (S.D. Fla. 1963); Compania Ron Bacardi, S.A. v. Bank of Nova Scotia, 193 F. Supp. 814, 815 (S.D. N.Y. 1961); Naamloze Vennootschap Suikerfabrik 'Wono-Ash' v. Chase Nat'l Bank, 111 F. Supp. 833, 841 (S.D. N.Y. 1953) (Kaufman, J.). Accordingly, 'foreign confiscatory decrees purporting to divest nationals and corporations of the foreign sovereign of property located in the United States uniformly have been denied effect in our courts * * *.' Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 447, 84 S. Ct. 923, 950 (1964) (White, J., dissenting), citing *inter alia*, Moscow Fire Ins. Co. of Moscow v. Bank of New York & Trust Co., 280 N.Y. 286, 20 N.E. 2d 758 (1939), aff'd by an equally divided court sub nom. United States v. Moscow Fire Ins. Co., 309 U.S. 624, 60 S. Ct. 725, 84 L. Ed. 986 (1940); Vladikavkazsky R. R. v. New York Trust Co., 263 N.Y. 369, 189 N.E. 456 (1934). The application of this principle raises the significant questions here.
>
> * * *

On September 15, 1960, all the physical assets of the five entities in Cuba, including the plants and inventory of cigars and tobacco, were taken over by the Cuban government. As in *Sabbatino, the property physically* in Cuba 'was expropriated *rather than a contractual claim*' 376 U.S. at 413. The interventors, from then on in possession and control of the five entities, continued the manufacture of cigars in the seized plants from the tobacco on hand and no doubt such other tobacco as had to be procured.[7] They subsequently sold the finished cigars to the United States importers who have not yet paid for them. *For purposes of this case the interventors are claiming only the price of cigars shipped after the intervention.*[8]

Viewed in these terms the *situs* of the *debts due* from Faber, Coe & Gregg, Dunhill and Saks & Co. *is quite immaterial.* These obligations accrued by reason of sales completed *after* plaintiffs had been intervened. No debts were in existence at the time of the intervention. In short, the take-overs were fully executed under Cuban law before the trade acceptances and other obligations involved in this dispute arose.

Under *these* circumstances the act of state doctrine operates to prevent this court from questioning the validity of acts of seizure by the Cuban government of tangible physical property located in Cuba. I am compelled to refrain from examining the validity of these seizures for the strong policy reasons so fully

---

7. In an affidavit presented more than two months after the final stipulation of facts was filed with the court the former owners maintain that all the cigars had already been manufactured at the time of the seizures. The interventors refused to stipulate this fact and it is in dispute. Even were it established, however, it would be immaterial.

8. In order to avoid confusing the issues the interventor has expressed willingness to turn over to the defendants the small sum representing 'the price of cigars shipped prior to intervention,' provided the court rule in plaintiffs' favor with respect to the balance. Reply Brief for Plaintiff, p. 7.

stated by Mr. Justice Harlan in *Sabbatino*, and indeed, insofar as seizure of the physical property located in Cuba is concerned, by Mr. Justice White in his *Sabbatino* dissent. 376 U.S. at 445-47.

Accordingly, it is plain that the debts due for the price of cigars shipped *after* the interventions are owing to the interventors and not to the former owners who had been dispossessed of their property. The Cuban government has unequivocally directed that the interventors are empowered to sue to recover these obligations on behalf of the five plaintiffs, and this court may not question the validity of that decree."

It is difficult to see how the language in this opinion helps the Appellee.

According to the Petitioner's contention the decree of intervention involved in the above case is the same one as is involved in the case at bar. Therefore, when the Court said that the physical assets were seized under this decree "rather than a contractual claim" this was tantamount to holding that the decree did not affect foreign accounts receivable.

From these cases it is plain that the decree of intervention had no extraterritorial effect and that therefore the Act of State Doctrine may not be applied.

But if there ever had been a question about this point, it was completely removed from the case by the finding of the District Court that *the intervention and nationalization* of *Tabacalera did not purport to effect (sic) property located in* the United States (R. 183).

"If this is true," as the Court said in the *Pink* case, *supra*, "it is decisive of the present controversy."

This question as to extraterritoriality should be considered as settled here by the holding of the Court of Appeals in *King Faisal's* case (*Republic of Iraq* v. *First*

National City Bank, supra). In this case the holding is summed up in Headnote 12, as follows:

> "A Republic of Iraq ordinance confiscating all property of deceased King was not consistent with United States policy and laws and would not be enforced as to King's New York Bank account and his stock held in a custodian account in New York bank."

In *King Faisal's* case, the Court cited *Vladikavkazsky Railway Company* v. *New York Trust Co.*, 189 N.E. 456, 460 (N.Y., 1934), 91 A.L.R. 1426, 1430. This was an action to recover a bank deposit in plaintiff's name in a New York bank. Plaintiff was a Russian corporation which had been dissolved, whose property had been confiscated and whose obligations had been repudiated by the Kerenski regime. Its directors were refugees residing in Paris and allegedly were going to use the sums on deposit for improper purposes instead of applying them to payment of claims of local creditors.

In holding that the corporation, though dissolved and its directors non-residents of New York, could recover the Court, with these words, penetrated to the kernel of the case:

> "* * * In the case at bar, as in the other Russian cases which came to this court before the recognition of the present Russian government, the practical question was and is, *Shall the law compel a debtor in this state to pay its debt or permit it to hold the property of its creditor indefinitely?* This court definitely answered the question by deciding that, although the corporation in question was extinguished in its homeland and there dead in the eyes of the law, it continued its existence as 'a juristic person with capacity to sue' in this state." (Emphasis supplied).

and also:

> "Where there is confliction between our public policy and comity, our own sense of justice and equity as embodied in our public policy must prevail. Russian Socialist Federated Soviet Republic v. Cibrario, supra.
>
> It is hardly necessary to state that the arbitrary dissolution of a corporation, the confiscation of its assets, and the repudiation of its obligations by decrees, are contrary to our public policy and shocking to our sense of justice and equity. That the confiscation decree in question, clearly contrary to our public policy, was enacted by a government recognized by us, affords no controlling reason why it should be enforced in our courts. Baglin v. Cusenier Co., 221 U.S. 580, 31 S. Ct. 669, 55 L. Ed. 863."

In *Re Russian Bank for Foreign Trade*, 1 Ch. Div. 745, 767 (1933), the Court held that where a debt owed by a nationalized Russian corporation was "locally situated" or "primarily recoverable" in England, it was not affected by Soviet nationalization decrees even though it was due to a person who was a Russian subject at the date of the decree. In so holding the Court said:

> "If the debt was primarily recoverable in London, I am of opinion that it was not affected by the Soviet legislation, even though it was due to a person who was a Russian subject at the date of the nationalization decrees. Its locality must be taken to be the place where the debt was in the ordinary course recoverable: see *Rex* v. *Lovitt*,[1] *New York Life Insurance Co.* v. *Public Trustee*[2] and, *English Scottish and Australian Bank, Ld.* v. *Inland Revenue Commissioners*.[3]

1. (1912) A.C. 212.
2. (1924) 2 Ch. 101.
3. (1932) A.C. 238.

> The decrees in question could not according to our laws have the effect of extinguishing the debt, if locally situate here, or of transferring it to the Soviet Republic. This follows, I think, from the decisions of Hill J. and the Court of Appeal in The Jupiter (No. 3).[4] It is interesting to note that the same view is taken by the R.S.F.S.R. itself in a circular dated April 12, 1922, and in a circular issued by the People's Commissariat of Justice to all Districts Courts dated September 26, 1923, which are set out in the elaborate judgment of Hill J. above referred to. These circulars show that the Soviet Government does not regard the nationalizing decrees as having any extra-territorial effect even as against Russian citizens. Moreover, it is evident that our Courts have never entertained the view that a debt incurred here by a foreign corporation permitted to carry on business here under English law can be discharged by a foreign statute."

Sedgwick, Collins & Co. v. *Rossia Insurance Company of Petrograd*, 1 K.B. 1 (1926), involved garnishment by a local creditor of a Russian corporation for a debt owing to it by a local debtor. The Court held that debts owing to the Russian corporation by local debtors were not altered by the nationalization decrees of the Russian government. In his opinion, Sargant, L. J., said:

> "Nor do I think that the position of creditors here as against property of the Rossia Insurance Company here, such as debts owing to them from debtors in this country, is altered by legislation or decrees of the Russian sovereign power which 'nationalized' the undertaking and assets of the Rossia Insurance Company, that is, as I understand it, purported to transfer these assets from their private proprietors to the Russian nation as a whole. Effective as such legislation may be within the limits of Russian territory, it cannot determine the ownership of property locally situate in this country, such as debts owing from

4. (1927) P. 122, 144, 145; 250.

debtors here: see Dicey, Conflict of Laws, 2nd ed., p. 310, and *Lecouturier* v. *Rey*[3], an analogous case with reference to the goodwill of a trade mark or trade name in England."

On appeal to the House of Lords, the decree was affirmed. *Employers' Liability Assurance Corporation* v. *Sedgwick, Collins & Co.*, 1927 A.C. 95.

2. The Conflict Regarding the Validity of the Power of Attorney.

It is here contended that in *F. Palicio, supra*, the District Court whose opinion was affirmed per curiam held that the order of intervention there involved operated as an expropriation statute and that this is the self same order as is involved in the case sub judice. It is therefore contended that when the Court of Appeals in the case at bar held that the intervention decree did not revoke the power of attorney from Tabacalera to Jorge it thereby collided with the decision of the District Court as affirmed in *F. Palicio*.

There are several obvious flaws in this argument.

First. Rule 19 s/d 1 (b) of this Court provides that review on writ of certiorari is one of sound judicial discretion and will be granted only where there are special and important reasons therefor. In sub-paragraph (b) the reasons for granting the writ are elaborated upon and that section provides in part that one of the reasons to be considered is where a Court of Appeals has rendered a decision in conflict with the decision of another Court of Appeals on the same matter.

Now obviously the question as to the validity of the power of attorney from Tabacalera to Jorge was in no wise

3. (1910) A.C. 262.

involved in *F. Palicio,* and so no conflict between the two Courts of Appeal could exist.

Secondly. The per curiam affirmance by the Court of Appeals for the Second Circuit of a decision of the District Court does not create a basis for conflict certiorari because of statements in the District Court's opinion allegedly contrary to those of the Fifth Circuit.

Thirdly. The Court's opinion as to the effect of the order of intervention on the power of attorney previously given to Mr. Jorge was based upon testimony which the Respondents offered, none of which was disputed by the Petitioner. As was said in *Zwack* v. *Kraus Bros., supra,* cited in *Palicio* it was clear that the foreign government could not directly seize the assets which have a situs in the state of the forum and that to allow it to do so indirectly through confiscation of firm ownership would be to give its decree extraterritorial effect and thereby emasculate the public policy of the forum against confiscation.

In *F. Palicio y Compania, S.A.* v. *Brush, supra,* the Court in disposing of the contentions with respect to the confiscatory character and effectiveness of the Cuban Decree of Intervention said:

> ". . . In the language of the cases our courts will not give 'extraterritorial effect' to a confiscatory decree of a foreign state, even where directed against its own nationals."

The Court went on to say then that all of the physical assets of the five Cuban cigar manufacturers, including the plants and inventory were taken over by the Cuban Government, adding that "As in *Sabbatino, the property physically* in Cuba 'was expropriated *rather than a contractual* claim' 376 U.S. at 413" In summing up the Court said that

the debts due for the price of cigars shipped *after* the interventions were owing to the interventors and not to the former owners who had been dispossessed of their property.

For cigars sold *prior* to the intervention, which is the case here, the money owing was conceded to be in the prior owners.

Since Jorge was the grantee of the power of attorney from Tabacalera and had, in effect, a power coupled with an interest and since he was physically present in the United States when the decree of September 15, 1960, was passed, and since the right to exercise the power followed Mr. Jorge's person it follows that his rights could not be revoked by the Cuban decree.

CONCLUSION

The general rule of the decided cases in this Court respecting the granting of writs of certiorari in conflict cases has been stated by Corpus Juris (36 C.J.S. § 204 (3) p. 644) as follows: "Ordinarily the writ will not issue to review the evidence, to bring up questions not of general importance, or to review a case where the error does not affect the substantial rights of the parties." Also the text says that the conflict must be with the decision of another Court of Appeals on the same matter.

Viewed in this light it is evident that the petition in this case is without merit. The basic question has already been decided by this Court and the lower Court faithfully followed the ruling. So there is no conflict as contemplated

by Rule 19 subd. 1(b). It is therefore respectfully submitted that the petition for certiorari should be denied.

Respectfully submitted,

.....

SHUTTS & BOWEN,
Attorneys for Respondents,
10th Floor, First National Bank Building,
Miami, Florida 33131

I HEREBY CERTIFY that a copy of the foregoing Respondents' Brief in Opposition to Petition was mailed to FOWLER, WHITE, COLLINS, GILLEN, HUMKEY & TRENAM, ESQS., Attorneys for Petitioner, First Federal Building, Tampa, Florida, 33602, this ..... day of September, 1968.

.....